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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 880.

CHARLES R. BISSELL, PLAINTIFF IN ERROR,

vs.

THE TOWNSHIP OF SPRING VALLEY, CHEROKEE COUNTY, KANSAS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED JUNE 7, 1883.

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1 The papers, records, and proceedings in the said entitled action are in the words and figures following, to wit:

2 *Petition.*

UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant.

Charles R. Bissell, a resident of the city, county, and State of New York, and a citizen of the State of New York, plaintiff, complains of the Township of Spring Valley, in the county of Cherokee, in the State of Kansas, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Kansas, and a citizen of the State of Kansas, defendant, and says that heretofore, to wit, on or about December 15th, A. D. 1871, in payment of a subscription to the capital stock of the Atlantic and Pacific Railroad Company, a railroad corporation duly organized and existing under and by virtue of the laws of the State of Kansas, and to aid in the construction of a railroad running within and through the corporate limits of the said defendant, the said defendant under and in pursuance of an act of the legislature of the State of Kansas entitled "An act to enable municipal townships to subscribe for stock in any railroad, and to provide for the payment of the same," approved February 25th, A. D. 1870, under and in pursuance of an order of the board of county commissioners of the county of Cherokee, in the State of Kansas, and under and in pursuance of a vote of more than three-fifths of the qualified voters of the defendant, voting at an election duly held therein for such purpose, made, issued, and delivered among others, there being one hundred and fifty in all seventy-three certain negotiable bonds, all bearing date December 15th, A. D. 1871, whereby the said defendant by the terms

3 and conditions contained in each of the said bonds, for value received, promised to pay, fifteen years after the date thereof, to the Atlantic and Pacific Railroad Company or bearer one thousand dollars, with interest thereon at the rate of seven per cent. per annum from the date thereof, payable annually, on July first in each year, with interest coupons therefor thereto attached. Both the principal and interest of each of the said bonds were made payable at the office of Northrup & Chick, in the city, county, and State of New York; which said bonds, in order to distinguish them from others of like character, were numbered 22, 23, 24, 25, 31, 36, 37, 38, 39, 40, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 78, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, & 150; a copy of each of which said bonds (except

the number thereon) is filed herewith, made part thereof and marked "Exhibit A."

That afterwards, to wit, on December 15th, A. D. 1871, each of the said bonds, with all the interest coupons thereto attached, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities.

That afterwards, to wit, on April 11th, A. D. 1872, each of the said bonds, with all the interest coupons thereto attached, was duly registered in the office of the auditor of the State of Kansas, according to law, and the fact that each of the said bonds was so registered was then and there, under the hand and official seal of the said auditor, in writing duly certified and endorsed upon each of the said bonds, a copy of which said certificate and endorsement is filed herewith, made part hereof, and marked "Exhibit B."

That attached to each of the said bonds numbered 31, 142, 143, 144, 145, 146, 147, and 148, among others, were six (6) interest coupons, being the first, second, third, fourth, fifth, & sixth interest coupons thereto attached, and maturing on July 1st, A. D. 1872; July 1st, A. D.
4 1873; July 1st, A. D. 1874; July 1st, A. D. 1875; July 1st, A. D. 1876, and July 1st, A. D. 1877.

That attached to each of the said bonds numbered 149 & 150, among others, were five interest coupons, being the first, third, fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A. D. 1872; July 1st, A. D. 1874; July 1st, A. D. 1875; July 1st, A. D. 1876, and July 1st, A. D. 1877.

That attached to each of the said bonds numbered 62, 63, 66, 67, 68, 70, 71, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, and 139, among others, were four interest coupons, being the third, fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A. D. 1874; July 1st, A. D. 1875; July 1st, 1876, and July 1st, A. D. 1877.

That attached to each of the said bonds numbered 22, 24, 31, and 98, among others, were three interest coupons, being the fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A. D. 1875; July 1st, A. D. 1876; July 1st, A. D. 1877.

That attached to each of the said bonds numbered 23, 25, 36, 37, 38, and 39, among others, were two interest coupons, being the fifth and sixth interest coupons thereto attached, and maturing on July 1st, A. D. 1876, and July 1st, A. D. 1877.

That attached to the said bond numbered 64, among others, were three interest coupons, being the third, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A. D. 1874; July 1st, A. D. 1876, and July 1st, A. D. 1877.

That attached to the said bond numbered 65, among others, were four interest coupons, being the third, fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A. D. 1874; July 1st, A. D. 1875; July 1st, A. D. 1876, and July 1st, A. D. 1877.

That attached to each of the said bonds numbered 92, 93, 94, 95, and 96, among others, were two interest coupons, being the third and fourth interest coupons thereto attached, and maturing on July 1st, A. D. 1874, and July 1st, A. D. 1875.

5 That attached to the said bond numbered 40, among others, was one interest coupon, being the fifth interest coupon thereto attached, and maturing on July 1st, A. D. 1876.

That attached to the said bond numbered 69, among others, was one interest coupon, being the fourth interest coupon thereto attached, and maturing on July 1st, A. D. 1875.

That attached to the said bond numbered 78, among others, was one interest coupon, being the third interest coupon thereto attached, and maturing on July 1st, A. D. 1874.

That attached to each of the said bonds numbered 140 and 141, among others, was one interest coupon, being the second interest coupon thereto attached, and maturing on July 1st, A. D. 1873.

That, by the terms and conditions of each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of the said bonds as hereinbefore stated, the said defendant promised to pay to the treasurer of the Atlantic and Pacific Railroad Company or bearer at the maturity thereof, the sum of seventy dollars ($70.00).

That each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of the said bonds, as hereinbefore stated, except the number of the bond referred to thereon, is as follows, to wit:

$70.] COUNTY OF CHEROKEE, KANSAS. [$70.

COLUMBUS, *December* 15*th*, 1871.

The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company or bearer, at the office of Northrup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

WM. H. CLARK,
Chairman Board of County Commissioners.

Attest: J. G. DUNLAVY,
County Clerk.

$70.] COUNTY OF CHEROKEE, KANSAS. [$70.

COLUMBUS, *December* 15*th*, 1871.

6 The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company or bearer, at the office of Northup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

WM. H. CLARK,
Chairman Board of County Commissioners.

Attest: J. G. DUNLAVY,
County Clerk.

$70.] COUNTY OF CHEROKEE, KANSAS. [$70.

COLUMBUS, *December* 15*th*, 1871.

The Township of Spring Valley will pay to the treasurer of the Atlantic

and Pacific Railroad Company or bearer, at the office of Northup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

WM. H. CLARK,
Chairman Board of County Commissioners.

Attest: J. G. DUNLAVY,
County Clerk.

$70.] COUNTY OF CHEROKEE, KANSAS. [$70.

COLUMBUS, *December* 15*th*, 1871.

The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company or bearer, at the office of Northup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

WM. H. CLARK,
Chairman Board of County Commissioners.

Attest: J. G. DUNLAVY,
County Clerk.

$70.] COUNTY OF CHEROKEE, KANSAS. [$70.

COLUMBUS, *December* 15*th*, 1871.

The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company or bearer, at the office of Northup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to the Atlantic and Pacific Railroad Company.

7 WM. H. CLARK,
Chairman Board of County Commissioners.

Attest: J. G. DUNLAVY,
County Clerk.

$70.] COUNTY OF CHEROKEE, KANSAS. [$70.

COLUMBUS, *December* 15*th*, 1871.

The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company or bearer, at the office of Northup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to the Atlantic and Pacific Railroad Company.

WM. H. CLARK,
Chairman Board of County Commissioners.

Attest: J. G. DUNLAVY,
County Clerk.

That after the issuing and delivering of each of the said bonds, the registration thereof, and before the maturity of either of the said bonds, or either of the said first, second, third, fourth, fifth, and sixth interest coupons thereto attached, each of the said bonds, with the said interest coupons thereto attached, were sold and delivered to the plaintiff for the price of ninety cents on the dollar thereof cash, a valuable consideration.

That when each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of said bonds, as hereinbefore stated, became due and payable, the same was duly presented at the place where the same is made payable, and the payment thereof demanded and refused.

That each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of the said bonds, as hereinbefore stated, there being in all three hundred and sixty-nine (369) of the same, for seventy dollars each, and in the aggregate amounting to twenty-five thousand eight hundred and thirty dollars, with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1872; with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1873; with interest on four
8 thousand two hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1874; with interest on four thousand three hundred and forty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1875; with interest on four thousand four hundred and eighty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1876, and with interest on four thousand four hundred and ten dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D, 1877, remain due and wholly unpaid.

Wherefore the plaintiff prays judgment against the said defendant for twenty-five thousand eight hundred and thirty dollars, with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1872; with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1873; with interest on four thousand two hundred dollars thereof, at the rate of seven per cent. per annum, since July first, A. D. 1874; with interest on four thousand three hundred and forty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1875; with interest on four thousand four hundred and eighty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1876, and with interest on four thousand four hundred and ten dollars thereof, at the rate of seven per cent. per annum, since July 1st, A. D. 1877, together with all other proper relief.

ALFRED ENNIS,
Attorney for Plaintiff.

9 EXHIBIT A.

No. .] UNITED STATES OF AMERICA. [$1,000.

COUNTY OF CHEROKEE, STATE OF KANSAS.

Spring Valley Township Bond.

Know all men by these presents that Spring Valley Township, county of Cherokee, State of Kansas, acknowledges itself and is firmly bound to the Atlantic & Pacific Railroad Company in the sum of one thousand dollars, which sum the said township therein promises to pay to the said Atlantic & Pacific Railroad Company, or bearer, at the office of Northrop & Chick, in the city of New York, and State of New York, on the fifteenth day of December, 1886, together with the interest on the first day of July in each and every year until this bond matures, at the rate of seven per

cent. *cent.* per annum, which interest shall be payable annually on the presentation and delivery at said office of the coupons of interest hereto attached.

This bond being issued under and pursuant to an order of the board of county commissioners of Cherokee County, in the State of Kansas, by virtue of an act of the legislature of the State of Kansas, approved February 25th, 1870, entitled "An act to enable municipal townships to subscribe for stock in any railroad and to provide for the payment of the same;" and authorized by a vote of the people taken on the 4th day of February, 1871, as required by law upon the proposition to subscribe one hundred and fifty thousand dollars to aid in the construction of the said railroad, which proposition was voted upon on the day aforesaid, and three-fifths of the votes of said township being cast in favor of said proposition.

In testimony whereof the said board of county commissioners of Cherokee County have executed this bond by the chairman of said board, under the order thereof, signing his name hereunto, and by the clerk of
10 said board attesting the same and affixing the seal of said board.

This done at Columbus, Cherokee County, this 15th day of December, 1871.

{SEAL OF CHEROKEE COUNTY, KANSAS.} WM. H. CLARK, *Chairman Board of County Commissioners.*

J. G. DUNLAVY,
County Clerk.

EXHIBIT B.

I, A. Thoman, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued, that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the legislature entitled "An act to authorize counties, incorporated cities, & municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872.

Witness my hand and official seal this 11th day of April, 1872.

[SEAL.] A. THOMAN, *Auditor of State.*

(Endorsed:) No. 3242. In the circuit court of the United States in and for the district of Kansas. Charles R. Bissell, plaintiff, vs. The Township of Spring Valley, in the county of Cherokee, in the State of Kansas, defendant. Demand, $40,184.80. Filed Octo' 13, 1880. A. S. Thomas, clerk. Alfred Ennis, Topeka, Kans., attorney for plaintiff.

11 In the circuit court of the United States for the district of Kansas.

CHARLES R. BISSELL
vs. } 3242.
THE TOWNSHIP OF SPRING VALLEY.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite party in this action, or to any of

the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 13th day of October, 1880.

ALFRED ENNIS.

(Endorsed:) No. 3242. Charles R. Bissell vs. The Township of Spring Valley. Sec. for costs. Filed Octo. 13, 1880. A. S. Thomas, clerk.

Approved Oct. 13, 1880.

A. S. THOMAS, *Clerk.*

12 Circuit court of the United States of America, district of Kansas, ss.

The United States of America to the marshal of the district of Kansas, greeting:

You are hereby commanded to notify The Township of Spring Valley, in the county of Cherokee, in the State of Kansas, that it has been sued by Charles R. Bissell in the circuit court of the United States for the district of Kansas, and that unless it answer by the 12th day of November, A. D. 1880, the petition of the said Charles R. Bissell against it, filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the 23rd day of October, A. D. 1880.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 13th day of October, A. D. 1880.

[SEAL.] A. S. THOMAS, *Clerk.*

12½ Suit brought for the recovery of money. Amount claimed $32,130.00, with interest from the day of , A. D. 18 , at the rate of per cent. per annum.

With interest on		$700	thereof at the	of seven per cent. per annum since	July 1, 1872.
"	"	700	do.	" "	1, 1873.
"		4,200	do.	" "	1, 1874.
"	"	4,340	do.	" "	1, 1875.
"	"	4,480	do.	" "	1, 1876.
"	"	4,410	do.	" "	1, 1877.
"	"	4,410	do.	" "	1, 1878.
"	"	4,480	do.	" "	1, 1879.
"	"	4,410	do.	" "	1, 1880.

ALFRED ENNIS,
Attorney for Plaintiff.

U. S. marshal's return.

DISTRICT OF KANSAS, *ss:*

Received the within writ October the 13th, 1880, and served the same on the within-named defendant, The Township of Spring Valley, Cherokee County, State and district of Kansas, October the 18, '80, by delivering a true and correct copy of this writ to John Veach, E. A. Haynes, and Alexander Gould, to each of them personally; he, the said John Veach, being then and there the trustee of the said defendant, and he, the said E. A.

Haynes, being then and there the clerk of the said defendant, and he, the said Alex. Gould, being then and there the treasurer of the said defendant.

U. S. M. fees, $30.40.

B. F. SIMPSON, *U. S. M.*,
By J. H. SMITH, *Dep'ty.*

(Indorsed:) No. 3242. Circuit court of the United States, district of Kansas. Charles R. Bissell vs. The Township of Spring Valley, in the county of Cherokee, in the State of Kansas. Summons. Issued Oct. 13, 1880. Returnable Oct. 23, 1880. Filed Oct. 22, 1880. A. S. Thomas, clerk. E. Alfred Ennis, attorney for plaintiff.

13 *Stipulation.*

In the circuit court of the United States for the district of Kansas.

CHARLES R. BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, *of* in the State of Kansas.

It is hereby stipulated and agreed by the plaintiff in above-entitled case that the defendant file its answer in said case by or on the 18th November, 1880, the same to be of effect as if filed by answer day.

ALFRED ENNIS,
Att'y for Plaintiff.

NOVEMBER 17TH, 1880.

(Endorsed:) No. 3242. Charles R. Bissell vs. The Township of Spring Valley, in the county of Cherokee, in the State of Kansas. Filed Nov. 18, 1880. A. S. Thomas, clerk.

14 *Plea of defendant.*

In the circuit court of the United States for the district of Kansas.

CHARLES R. BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas.

Now comes the said defendant, by J. R. Hallowell and M. V. B. Bennett, its attorneys, and defends the wrongs and injuries set out in the declaration herein (when, &c.), and says that the said supposed bonds and coupons, or writings obligatory set out in said declaration are not its bonds, coupons, or writings obligatory, and of this it puts itself on the country.

2nd. And the said defendant, for further plea in this behalf, says that it ought not to be charged with the said supposed debts by virtue of the said supposed bonds, coupons, or writings obligatory, because it by its said attorneys say that the only proposition to take stock in the Atlantic & Pacific Railroad Company in the sum of one hundred and fifty thousand dollars or any other sum, and to pay for the same in bonds, was and is

found in the order of the board of county commissioners of Cherokee County, of January 8th, 1871, and which was and is as follows, to wit:

It is hereby ordered by the board of county commissioners of Cherokee County, Kansas, that an election be held in Spring Valley Township on the 4th day of February, 1871, in said county for the purpose of submitting to the qualified voters of said township a proposition to take stock in the Atlantic and Pacific Railroad to the amount of ($150,000) one hundred and fifty thousand dollars, to be paid for in bonds, payable in fifteen (15) years from date of issue, and at the rate of seven (7) per cent. per annum, upon the condition that said railroad company shall locate and build a railroad into said township, and upon the further condition
15 that said railroad company shall locate, and build, and retain the depot of said road at some point within the corporate limits of the city of Baxter Springs in said township, and at some point north of Sheridan street in said city.

Notice of said election to be given by publication in the Cherokee Sentinel, a newspaper published in said county and also by copy of this order posted up in at least three public places in the township for two weeks before said election.

The vote to be cast to be "for township bonds" or "against township bonds." January 3rd, 1871.

A true copy of the original order.

Attest:

J. G. DUNLAVY,
Clerk County Court, Cherokee County.

Which order is printed in full upon the back of each of the supposed and pretended bonds, fraudulently and falsly pretended to be issued upon said order, and the pretended election subsequent thereto.

And this defendant says that an election was held in said township on said 4th day of February, 1871, in pursuance to said order, and afterwards, to wit, on the 10th day of February, A. D. 1871, said vote was canvassed by the board of county commissioners of said county with the following result, viz: For the bonds, seventy-one votes; against the bonds, ninety-two votes; whereby said proposition was wholly rejected.

Afterwards, to wit, on the 21st day of February, A. D. 1871, under the direction of a so-called peremptory writ of mandamus issued out of the district court of Cherokee County, the said board of county commissioners made another and different canvass of the votes of said township, including in said canvass the votes cast by citizens of Baxter Springs, a city of the second class under the laws of Kansas, and by law not comprising any part of said township, which canvass resulted as follows, to wit:

For bonds, Spring Valley Township, seventy-one; for bonds
16 First Ward City Baxter Springs, four hundred & thirty-three; for bonds, Second Ward City Baxter Springs, one hundred & eighteen.

Against bonds, Spring Valley Township, ninety-two; against bonds, First Ward Baxter Springs, one; making, by said last-named canvass a majority for said bonds.

That afterwards, to wit, on the 19th day of September, 1871, the said board of county commissioners, the chairman thereof, Milton Douglass, dissenting, passed an order as follows, to wit:

"That the bonds voted by Spring Valley Township at an election held February 4th, 1871, be signed by the chairman and deposited with the First National Bank of Baxter Springs, who shall give a bond to the county of Cherokee in the sum of two hundred thousand dollars, for the faithful performance of its trust, said bond subject to the approval or rejection of the board of county commissioners of Cherokee County, Kansas."

Afterwards, to wit, on the 15th day of December, 1871, the said board of county commissioners passed the following order, to wit:

"That the bonds voted by Spring Valley Township at said election be signed by the chairman and attested by the county clerk and deposited with S. W. Vannatta and G. W. Robertson, to be held by them in trust for the use and benefit of the Atlantic and Pacific Railroad Company or their assigns, said bonds not to be delivered by said trustees to said railroad company or their assigns until such time as the railroad company have fully complied with their contract with Spring Valley Township."

The chairman of the board dissented from the making of said order and requested the reasons thereof to be recorded, which was done, to wit:

1st. That the trustees named in said order were required to give no bond for their trust.

2rd. That the law states that the bonds voted should not be issued until the railroad company had fully complied with their contract with Spring Valley Township.

17 And at the same time the following proceedings were had and the following record thereof made, as appears of the records of said board of county commissioners, to wit:

Whereas at a special session of the board of county commissioners of Cherokee County, Kansas, held at the court-house in Columbus, the county seat of said county, on the 15th day of December, 1871, the said board of county commissioners made an order that the bonds voted in Spring Valley Township, February 4th, 1871, be signed by the chairman and deposited with S. W. Vannatta and L. W. T. Robinson, to be held by them in trust for the use and benefit of the Atlantic and Pacific Railroad Company or their assigns; and whereas the chairman of said board of county commissioners refused and still refuses to sign said bonds, though requested so to do by said order: Therefore be it

Resolved, That the board of county commissioners proceed to elect a temporary chairman to sign and deposit said bonds in pursuance of said order.

The chairman refusing to put the vote in accordance with the above order, the vote was put by the clerk, and resulted as follows:

Affirmative, W. H. Clark, member; affirmative, S. W. Vannatta, member; negative, Milton Douglass, chairman.

The chairman, as in the former case, requested the clerk to note that the reasons for voting in the negative were "that the law only empowers the board to elect a temporary chairman in the absence of the chairman," and that in this case he was present and claimed his office as chairman of said board.

Whereupon, at the same time and place, the following proceedings were had, as appears by the records of said board, to wit:

"Whereas it was voted that the board elect a temporary chairman for the purpose of signing the bonds voted by Spring Valley Town-

18 ship, on account of Milton Douglass, chairman of said board having refused, it was moved by S. W. Vannatta that W. H. Clark be appointed temporary chairman for said purpose, seconded by Clark; motion was put by the clerk (the chairman refusing to), resulted as follows: Affirmative, S. W. Vannatta and W. H. Clark; negative, Milton Douglas. The chairman requested the clerk to make a special note of his vote and reasons for voting negatively, and that he protests against the signing of said bonds by the temporary chairman, and further reasons, aside from those heretofore stated, that he is not a legally elected or appointed temporary chairman."

Whereupon, after said illegal and wholly unauthorized proceedings, the said W. H. Clark, pretending to be chairman of said board of county commissioners, signed one hundred and fifty of said bonds of the denomination of one thousand dollars each, purporting to be issued to the Atlantic and Pacific Railroad Company, and of which the bonds and coupons set out in the plaintiff's declaration are a part, all of the coupons attached to each of said bonds being payable at no specified time, but immediately, which was wholly unauthorized by law.

This defendant says that after said pretended execution of said bonds the said Clark, Vannatta, and Robinson, conspiring together and intending to cheat and defraud this defendant, deliver' said bonds to the said Vannatta and Robinson and one Doctor Clark, they being at the time the officers and directors of the St. Louis and Kansas Southern Railroad Company, a railroad company organized under the laws of Kansas, and said bonds were delivered by them to other agents of said St. Louis and Kansas Southern Railroad Company, who put them on the market and sold them; this defendant says that said bonds were delivered without any part or portion of the said railroad being built into, through, or near the said township, nor has any part thereof been built since into or through said township, and that no stock has ever been issued for said bond;

19 this defendant further says that J. G. Dunlavy, whose name appears on said bonds as clerk, never signed or authorized his name to be signed to said bonds or coupons, nor did he affix or authorize to be affixed, the seal of said board of county commissioners to said bonds or coupons; this defendant says that the plaintiff is not a bona fide holder for value of said bonds, but holds the same affected with notice of all the defences of said defendant.

All of which the defendant is ready to verify. Whereupon defendant prays judgment if the said plaintiff ought to have or maintain his said action against the said defendant.

3rd. And this defendant, for a further plea, says that it ought not to be charged with the said supposed debt by virtue of the said supposed bonds and coupons, because it says that said supposed bonds and coupons were never executed and delivered to the Atlantic & Pacific Railroad Company or to its agents or assigns. And this defendant further says that said company had no authority or power by its charter or otherwise to build a railroad into or through said township or any part thereof, nor did it ever undertake, promise, or offer to build such a road, nor did it at any time build any part or portion of its, or any, railroad into or through said township—all of which said plaintiff had notice of, and this defendant is ready to verify.

Wherefore this defendant prays judgment whether said plaintiff ought to have or maintain his said action.

4th. For further plea this defendant says that it ought not to be charged with said supposed debt by virtue of said supposed bonds and coupons, because it says that at the date of the vote and pretended issue of said bonds, as set out in the said plea herein, the amount of said bonds was above the amount which would require a levy of more than one per
20 cent. per annum on the taxable property of said township to pay the yearly interest on said supposed one hundred and fifty thousand dollars—of which the said plaintiff had notice of, and this this defendant is ready to verify.

Wherefore this defendant prays the judgment of this court whether the said plaintiff ought to have and maintain his said action.

5th. For further plea this defendant says that it ought not to be charged with said supposed debt, by virtue of said supposed coupons numbered in said declaration of plaintiff, and shown by the averments of said plaintiff's declaration to have matured and become payable more than five years prior to the 13th day of October, A. D. 1880, the date of filing the declaration herein in the clerk's office of this court, the same being barred by the statute of limitations.

Wherefore this defendant prays judgment of this court, whether said plaintiff ought to have and maintain said action.

J. R. HALLOWELL &
M. V. B. BENNETT,
Defendant's Attorney.

STATE OF KANSAS,
County of Shawnee, ss:

J. R. Hallowell, being duly sworn, deposes and says that he is one of the attorneys of the Township of Spring Valley, in the county of Cherokee, in the State of Kansas, the defendant in the above-entitled action; that the foregoing plea has been read to him; that he knows the contents thereof, and that the matters and things therein stated relative to the non-execution of the bonds and coupons sued on herein are true and correct of his own personal knowledge.

J. R. HALLOWELL.

Subscribed and sworn to before me this 18th day of November, A. D. 1880.

[SEAL.] J. C. WILSON,
Clerk U. S. Dist. Court, Dist. of Kans.

(Endorsed:) No. 3242. Charles R. Bissell vs. The Township of Spring Valley, in the county of Cherokee, in the State of Kansas. Plea of defendant. Filed Nov. 18, 1880. A. S. Thomas, clerk. Hallowell & Johnston & M. V. B. Bennett, defendant's attorneys.

21 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, 1880, proceedings were had and appear of record, in words and figures following, to wit:

TUESDAY, *December* 7, 1880.

CHARLES R. BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee. } 3242.

Continued.

22 UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant.

The plaintiff in the above and foregoing entitled suit demurs to the second, third, and fourth counts of the defendant's answer filed therein, for the following reasons, to wit:

First. That the same do not state facts sufficient to constitute a defence to the plaintiff's action.

ALFRED ENNISS,
Attorney for Plaintiff.

(Endorsed:) No. 3242. Charles R. Bissell, plaintiff, vs. The Township of Spring Valley, in the county of Cherokee, in the State of Kansas, defendant. Demurrer to 2nd, 3rd, 4th, & 5th counts of answer. Filed Dec. 11, 1880. A. S. Thomas, clerk. Alfred Ennis, att'y for plaint.

23 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 6th day of June, 1881, proceedings were had and appear of record in words and figures following, to wit:

TUESDAY, *June* 21, 1881.

CHARLES R. BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, Kans. } 3242.

Continued.

24 Circuit court United States, district of Kansas, December, 1881.

BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee.

Action upon bonds alleged to have been issued by defendant to aid in the construction of a railroad.

The answer, among other things, avers as follows: (Here copy 2nd, 3rd, 4th, & 5th counts of ans., omitting the clause charging notice to plaintiff.)

To these counts of the answer the plaintiff demurs, and the present hearing is upon the demurrer.

Alfred Ennis & Campbell, for pl'ff; J. R. Hallowell & M. V. B. Bennett for def't.

McCRARY, *Circuit Judge:*

1. The statute of Kansas provides that bonds such as those sued upon must be signed by the chairman of the board of county commissioners and be attested by the clerk under the seal of the county.

The answer alleges that J. G. Dunlavy, whose name appears on said bonds as clerk, never signed or authorized his name to be signed to said bonds or coupons, nor did he affix or authorize to be affixed the seal of said board of county commissioners to said bonds or coupons.

As we understand the law the municipality cannot be bound upon an instrument of this character unless it is executed by the officers named. A purchaser must inquire whether the bonds and coupons were so executed. If such instruments are signed not by the proper officers, but by persons having no authority or color of authority—by mere volunteers—they are void. The above allegation charges this in substance, and if true, it is a good defence. It alleges that the clerk did not sign the bonds or coupons and did not authorize any one to sign for him.

If it be true that they were signed by the deputy clerk, this must be averred by way of replication.

The demurrer to this part of the answer is overruled.

25 2. The answer shows that the person who signed the bonds as chairman of the board, was acting in that capacity under color of authority and that he was at least chairman de facto, and not a mere volunteer or usurper. It is well settled that the official acts of officers de facto are valid and binding in so for as their parties and the public are concerned, however irregular the mode of their appointment.

3. The certificate of the auditor of state that the bonds were legally and regularly issued is only prima facie evidence of that fact, and does not estop the municipality to make any defence that might otherwise have been made as against a purchaser of the bonds in good faith and without actual notice.

The demurrer is sustained except as to the one defence above specified.

(Endorsed:) No. 3242. Filed Dec. 2, 1881. A. S. Thomas, clerk.

26 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 28th day of November, 1881, proceedings were had, and appear of record, in words and figures following, to wit:

TUESDAY, *December* 6, 1881.

CHARLES R. BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY, COUNTY of Cherokee, Kansas. } 3242.

On motion it is ordered by the court that defendant have 30 days in

which to file amended answer and the plaintiff 30 days thereafter to reply, and continued.

27 UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant.

It is hereby stipulated and agreed by and between the parties to the above and foregoing entitled suit that the defendant is to have the privelege and be permitted to file its amended answer or plea as of this date, and the plaintiff is to have thirty days in which to reply thereto.

This March 7th, A. D. 1882.

ALFRED ENNIS,
Attorney for Plaintiff.
J. A. HALLOWELL,
Att'y for Def't.

(Endorsed:) No. 3242. U. S. circuit court. Charles R. Bissell vs. Township of Spring Valley. Stipulation. Filed March 7, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

28 *Amended plea of defendant.*

In the circuit court of the United States for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant.

Now comes the said defendant, by J. R. Hallowell and M. V. B. Bennett, its attorneys, and defends the wrongs and injuries set out in the declaration herein (when, &c.), and says that the said supposed bonds and coupons or writings obligatory set out in said declaration are not its bond', coupons, or writings obligatory, and of this it puts itself on the country.

2nd. And the said defendant for further plea in this behalf says that it ought not to be charged with the said supposed debts by virtue of the said supposed bonds, coupons, or writings obligatory, because it by its said attorneys says that the only proposition to take stock in the Atlantic & Pacific Railroad Company in the sum of one hundred and fifty thousand dollars, or any other sum, and to pay for the same in bonds, was and is found in the order of the board of county commissioners of Cherokee County, of January 8th, 1871, and which was and is as follows, to wit:

"It is hereby ordered by the board of county commissioners of Cherokee County, Kansas, that an election be held in Spring Valley Town-

ship on the 4th day of February, 1871, in said county, for the purpose of submitting to the qualified voters of said township a proposition to take stock in the Atlantic and Pacific Railroad to the amount of ($150,000) one hundred and fifty thousand dollars, to be paid for in bonds, payable in fifteen (15) years from date of issue, and at the rate of seven (7) per cent. per annum, upon the condition that said railroad company shall locate and build and retain the depot of said road at some point within the corporate limits of the city of Baxter Springs in said township, and at some point north of Sheridan street in said city, notice of said election to be given by publication in the Cherokee Sentinel, a newspaper published in said county, and also by copy of this order posted up in at least three public places in the township for two weeks before said election.

"The vote to be cast to be 'for township bonds' or 'against township bonds.'

"January 3rd, 1871.

"A true copy of the original order.

"Attest:

"J. G. DUNLAVY,

"*Clerk County Court, Cherokee County.*"

Which order is printed in full upon the back of each of the supposed and pretended bonds, fraudulently and falsely pretended to be issued upon said order, and the pretended election subsequent thereto. And this defendant says that an election was held in said township on said 4th day of February, 1871, in pursuance to said order, and afterwards, to wit, on the 10th day of February, 1871, said vote was canvassed by the board of county commissioners of said county with the following result, viz: For the bonds, seventy-one votes; against the bonds, ninety-two votes, whereby said proposition was wholly rejected.

Afterwards, to wit, on the 21st day of February, 1871, under the direction of a so-called peremptory writ of mandamus issued out of the district court of Cherokee County, the said board of county commissioners made another and different canvass of the votes of said township, including in said canvass the votes cast by citizens of Baxter Springs, a city of the second class under the laws of Kansas, and by law not composing any part of said township, which canvass resulted as follows, to wit:

For bonds: Spring Valley Township, seventy-one.

For bonds: First ward, city Baxter Springs, four hundred & thirty-three.

For bonds: Second ward, city Baxter Springs, one hundred & eighteen.

Against bonds: Spring Valley Township, ninety-two.

Against bonds: First ward, Baxter Springs, one.

Making for said last-named canvass a majority for said bonds.

That afterwards, to wit, on the 19th day of September, 1871, the said board of county commissioners, the chairman thereof, Milton Douglass dissenting, passed an order as follows, to wit:

"That the bonds voted by Spring Valley Township at an election held February 4th, 1871, be signed by the chairman and deposited with the First National Bank of Baxter Springs, who shall give a bond to the county of Cherokee in the sum of two hundred thousand dollars for the faithful performance of its trust, said bond subject to the approval or re-

jection of the board of county commissioners of Cherokee County, Kansas."

Afterwards, to wit, on the 15th day of December, 1871, the said board of county commissioners passed the following order, to wit:

"That the bonds voted by Spring Valley Township at said election be signed by the chairman, and attested by the county clerk, and deposited with S. W. Vannatta and L. W. Robertson, to be held by them in trust, for the use and benefit of the Atlantic and Pacific Railroad Company, or their assigns, until such time as the railroad company have fully complied with their contract with Spring Valley Township."

The chairman of the board dissented from the making of said order and requested the reasons thereof to be recorded, which was done, to wit:

1st. That the trustees named in said order were required to give no bond for their trust.

2nd. That the law states that the bonds voted should not be issued until the railroad company had fully complied with their contract with Spring Valley Township.

And at the same time the following proceedings were had, and the following record thereof made, as appears of the records of said board of county commissioners, to wit:

"Whereas at a special session of the board of county commissioners of Cherokee County, Kansas, held at the court-house at Columbus, the
31 county seat of said county, on the 15th day of December, 1871, the said board of county commissioners made an order that the bonds voted in Spring Valley Township, February 4th, 1871, be signed by the chairman and deposited with S. W. Vannatta and L. W. T. Robinson, to be held by them in trust for the use and benefit of the Atlantic and Pacific Railroad Company or their assigns; and whereas the chairman of said board of county commissioners refused and still refuses to sign said bonds, though requested so to do by said order. Therefore,

Be it resolved, That the board of county commissioners proceed to elect a temporary chairman to sign and deposit said bonds in pursuance of said order. The chairman refusing to put the vote in accordance with the above order, the vote was put by the clerk, and resulted as follows:

Affirmative, W. H. Clark, member; affirmative, S. W. Vannatta, member; negative, Milton Douglass, chairman.

The chairman, as in the former case, requested the clerk to note that the reasons for voting in the negative were:

That the law only empowers the board to elect a temporary chairman in the absence of the chairman, and that in this case he was present and claimed his office as chairman of said board.

Whereupon, at the same time and place, the following proceedings were had, as appears by the records of said board, to wit:

"Whereas it was voted that the board elect a temporary chairman for the purpose of signing the bonds voted by Spring Valley Township on account of Milton Douglass, chairman of said board, having refused. It was moved by S. W. Vannatta that W. H. Clark be appointed temporary chairman for said purpose. Seconded by Clark. Motion was put by the clerk (the chairman refusing to); resulted as follows:

"Affirmative, S. W. Vannatta and W. H. Clark; negative, Milton Douglass.

32 "The chairman requested the clerk to make a special report of his vote and reasons for voting negatively, and that he protests against the signing of said bonds by the temporary chairman, and further reasons, aside from those heretofore stated, that he is not a legally elected or appointed temporary chairman."

Whereupon, after said illegal and wholly unauthorized proceedings, the said W. H. Clark pretending to be chairman of said board of county commissioners, signed one hundred and fifty of said bonds of the denomination of one thousand dollars each, purporting to be issued to the Atlantic and Pacific Railroad Company, and of which the bonds and coupons set out in the plaintiff's declaration are a part, all of the coupons attached to each of said bonds being payable at no specified time, but immediately, which was wholly unauthorized by law.

This defendant says that after said pretended execution of said bonds the said Clark, Vannatta and Robinson conspiring together, and intending to cheat and defraud this defendant, delivered said bonds to the said Vannatta and Robinson, and one Dr. Clark, they being at the time the officers and directors of the St. Louis and Kansas Southern Railroad Company, a railroad company organized under the laws of Kansas, and said bond were delivered by them to other agents of said St. Louis and Kansas Southern Railroad Company, who put them on the market and sold them.

This defendant says that said bonds were delivered without any part or portion of the said railroad being built into, through or near the said township, nor has any *any* part thereof been built since into or through said township, and that no stock has ever been issued for said bonds.

This defendant further says that J. G. Dunlavy, whose name appears on said bonds as clerk, never signed or authorized his name to be signed to said bonds or coupons, nor did he affix, or authorize to be affixed, the seal of said board of county commissioners to said bonds or coupons.

33 This defendant says that the plaintiff is not a bona fide holder for value of said bonds, but holds the same affected with notice of all the defenses of said defendant; and defendant further says that said plaintiff became the purchaser of said supposed bonds, coupons, and writings obligatory for a price so small that he was thereby notified of the defects of said bonds and coupons. All of which the defendant is ready to verify.

Wherefore defendant prays judgment if the said plaintiff ought to have or maintain his said action against the said defendant.

3rd. And this defendant, for a further plea, says that it ought not to be charged with the said supposed debt by virtue of the said supposed bonds and coupons, because it says that said supposed bonds and coupons were never executed and delivered to the Atlantic and Pacific Railroad Company, or to its agents or assigns. And this defendant further says that said company had no authority or power by its charter or otherwise to build a railroad into or through said township or any part thereof, nor did it ever undertake, promise, or offer to build such a road, nor did it at any time build any part or portion of its or any railroad into or through said township; all of which said plaintiff had notice of, and this defendant is ready to verify.

Wherefore this defendant prays judgment whether said plaintiff ought to have or maintain his said action.

4th. For further plea this defendant says that it ought not to be charged

with said supposed debt by virtue of said supposed bonds and coupons, because it says that at the date of the vote and pretended issue of said bonds, as set out in the said plea herein, the amount of said bonds was above the amount which would require a levy of more than one per cent. per annum on the taxable property of said township to pay the yearly interest on said supposed one hundred and fifty thousand dollars, of
34 which the said plaintiff had notice of, and this this defendant is ready to verify.

Wherefore this defendant prays the judgment of this court whether the said plaintiff ought to have and maintain his said action.

5th. For further plea this defendant says that it ought not to be charged with said supposed debt by virtue of said supposed coupons mentioned in said declaration of plaintiff, and shown by the averments of said plaintiff's declaration to have matured and become payable more than five years prior to the 13th day of October, 1880, the date of filing the declaration herein in the clerk's office of this court, the same being barred by the statute of limitations.

Wherefore this defendant prays judgment whether said plaintiff ought to have and maintain his said action.

6th. The said defendant avers that said supposed bonds, coupons, and writings obligatory, by the wrongful acts of the said evil-minded and evil-disposed persons, were placed upon the markets, and have become a great source of annoyance and expense to said defendant, whereby it has been compelled to defend against the wrongful charge and claim of the holders of these said false, fictitious, and forged bonds, coupons, and writings obligatory, and have been greatly damaged, and the progress and development of the territory comprised within the limits of defendant have been retarded by reason of the said false writings being in circulation.

Therefore defendant asks that judgment be rendered against the said plaintiff directing the delivery of said false writings described in plaintiff's declaration to this defendant.

Wherefore this defendant prays judgment of this court whether said plaintiff ought to have and maintain said action.

J. R. HALLOWELL AND
M. V. B. BENNETT,
Defendants' Attorneys.

35 STATE OF KANSAS,
County of , *ss:*

J. R. Hallowell, being duly sworn according to law, says that he is one of the attorneys of the Township of Spring Valley, in the county of Cherokee, in the State of Kansas, the defendant in the above-entitled action; that he has read the foregoing plea; that he knows the contents thereof, and that the matters and things therein stated relative to the non-execution of the bonds and coupons sued on herein are true and correct, of his own personal knowledge.

J. R. HALLOWELL.

Subscribed and sworn to before me this 7th day of March, A. D. 1882.
[SEAL.]
J. G. WILSON,
Clerk U. S. Dist. Court,
By GEO. H. BOWHAY,
Deputy.

(Endorsed:) No. 3242. Charles R. Bissell vs. The Township of Spring Valley, in the county of Cherokee, in the State of Kansas. Amended plea of defendant. Filed March 7, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy. J. R. Hallowell and M. V. B. Bennett, defendant's attorneys.

36 UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant. } Reply.

Charles R. Bissell, the plaintiff in the above and foregoing entitled suit, for reply to the defendant's plea or answer filed therein, says:

First. That he denies each and every allegation therein contained.

Second. That he admits that the bonds, to which the interest coupons sued on belong were not attested by J. G. Dunlavy, county clerk of the county of Cherokee, in the State of Kansas, in person, but alleges the fact to be that at the time of issuing said bonds the said J. G. Dunlavy was sick and unable to discharge the duties of his office, and by reason thereof thereupon appointed, authorized and empowered his brother, John Dunlavy, to attest the said bonds for him, the said J. G. Dunlavy, county clerk of the county of Cherokee, in the State of Kansas, by thereupon signing his, the said J. G. Dunlavy's name, as county clerk of the county of Cherokee, in the State of Kansas, to said bonds, and by thereupon affixing the seal of the county of Cherokee, in the State of Kansas, to the same.

Third. That he admits that the bonds to which the interest coupons sued on belong were not attested by J. G. Dunlavy, county clerk of the county of Cherokee, in the State of Kansas, in person, but alleges the fact to be that at the time of issuing the said bonds the said J. G. Dunlavy was sick and unable to discharge the duties of his office; that thereupon John Dunlavy, a duly appointed deputy county clerk of the county of Che-
36 rokee, in the State of Kansas, then acting as such deputy county clerk of the county of Cherokee, in the State of Kansas, attested the said bonds by signing the name of J. G. Dunlavy, county clerk of the county kee, in the State of Kansas, thereto, and by thereupon affixing of Chero- the seal of the county of Cherokee, in the State of Kansas, thereto.

Fourth. That he admits that the bonds to which the interest coupons sued on belong were not attested by J. G. Dunlavy, county clerk of the county of Cherokee, in the State of Kansas, in person, but alleges the fact to be that at the time of issuing the said bonds the said J. G. Dunlavy was sick, and unable to discharge the duties of his office; that thereupon John Dunlavey, at the request of J. G. Dunlavey, county clerk of the county of Cherokee, in the State of Kansas, and with his knowledge and consent, and at the request of the board of county commissioners of the county of Cherokee, in the State of Kansas, and with their knowledge and consent, entered into, took possession, and assumed to discharge the duties of the office of county clerk of the county of Cherokee, in the

State of Kansas, and while thus discharging the duties of such office he, at the request of J. G. Dunlavey, county clerk of the county of Cherokee, in the State of Kansas, and with his knowledge and consent, and at the request of the board of county commissioners of the county of Cherokee, in the State of Kansas, and with their knowledge and consent, attested the said bonds by signing the name of J. G. Dunlavey, county clerk of the county of Cherokee, in the State of Kansas, thereto, and by thereupon affixing the seal of the county of Cherokee, in the State of Kansas, thereto.

Wherefore plaintiff asks judgment as prayed for in his petition filed herein.

ALFRED ENNIS,
Attorney for plaintiff.

(Endorsed:) 3242. U. S. circuit court. Charles R. Bissell vs. The Township of Spring Valley, Cherokee County, &c. Plaintiff's reply. Consent to file this reply given this 11th day April, 1882. J. R. Hallowell, att'y for de. Filed April 11, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy. Alfred Ennis, attorney for plaintiff.

38 *Stipulation to continue.*

UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant. } No. 3242.

It is hereby stipulated and agreed by and between the parties to the above and foregoing entitled suit that said suit be continued to the November term of said court.

ALFRED ENNIS,
Attorney for complainant.
J. R. HALLOWELL,
Att'y for defendant.

(Endorsed:) No. 3242. Charles R. Bissell vs. Township of Spring Valley. Stipulation to continue. Filed June 2, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, Deputy.

39 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the circuit court of the United States of America, for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, 1882, proceedings were had and appear of record in words and figures following, to wit:

WEDNESDAY, *June* 7, 1882.

CHARLES R. BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY. } 3242.

Continued as per stipulation.

40 In the circuit court of the United States in and for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant. } Agreement between the parties.

It is hereby agreed by and between the parties to this suit:

1st. That the peply filed herein shall be withdrawn by the plaintiff.

2nd. That the answer of the defendant shall be withdrawn, and that in lieu thereof the defendant shall file an answer setting out the question of defense now stated in answer as to the signature of J. G. Dunlavey, and the affixing of the county seal, and also a plea of the statute of limitations to coupons barred, said answer to be verified.

3rd. That the plaintiff shall forthwith file his demurrer to said answer, and the whole question be submitted to the court at the present term thereof.

4th. That judgment shall be rendered in accordance with the pleadings by the court upon the sustaining or overruling of the demurrer.

5th. It is further agreed that the plaintiff herein may withdraw the coupons sued on maturing in July, 1878, 1879, and 1880.

J. R. HALLOWELL,
M. V. B. BENNETT,
ROSSINGTON, JOHNSTON & SMITH,
Att'ys for Def't's.
ALFRED ENNIS, *Att'y for Pl'ff,*
By WM. P. DOUTHITT.

(Endorsed:) No. 3242. Circuit court of the United States, district of Kansas. Charles R. Bissell vs. The Township of Spring Valley. Agreement between parties. Filed Dec. 6, 1882. A. S. Thomas, clerk.

41 In the circuit court of the United States for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant. } Amended answer.

Now comes the said defendant, by J. R. Hallowell, M. V. B. Bennett and Rossington, Johnston & Smith, its attorneys, and for answer to the allegations set out in the plaintiff's petition herein, says:

That it ought not to be charged with the said supposed debt by virtue of the said supposed bonds and coupons, because it, by its attorneys, says that J. G. Dunlavy, whose name appears on said bonds and coupons as county clerk, never signed his name thereto or thereon, nor ever authorized any party or parties to sign his name thereto or thereon, and that said signature is not his signature.

Nor did he affix or authorize to .be affixed the seal of said county of Cherokee to said bonds or coupons.

2nd. For further answer this defendant says, that it ought not to be charged with said supposed debt by virtue of said supposed coupons mentioned in said petition of plaintiff, and shown by the averments of said petition to have matured in July, 1872, 1873, 1874, and 1875, the same having become due more than five years before the 13th of October, 1880, the date of the commencement of this action, the same being barred by the statute of limitations.

Therefore defendant prays judgment and its costs herein expended.

J. R. HALLOWELL,
M. V. B. BENNETT, &
ROSSINGTON, JOHNSTON & SMITH,
Att'ys for Defendants.

42 STATE OF KANSAS,
County of Shawnee, ss:

J. R. Hallowell, being duly sworn according to law, says that he is one of the attorneys of the Township of Spring Valley, in the county of Cherokee, & State of Kansas, the defendant in the above-entitled action; that he has read the aforegoing plea, that he knows the contents thereof, and that the matters and things therein stated relative to the non-execution of the bonds and coupons sued on herein are true and correct, of his own personal knowledge.

J. R. HALLOWELL.

Subscribed and sworn to before me this 6th day December, A. D. 1882.
[SEAL.] A. S. THOMAS, *Clerk.*

(Endorsed:) No. 3242. Circuit court of the United States, district of Kansas. Charles R. Bissell vs. The Township of Spring Valley. Amended answer. Filed Dec. 6, 1882. A. S. Thomas, clerk. J. R. Hallowell, M. V. B. Bennett, Rossington, Johnston & Smith, defendant's attorneys.

43 *Demurrer to amended answer.*

UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the district of Kansas.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant.

Charles R. Bissell, the plaintiff in the above and foregoing entitled suit,

demurs separately to each of the 1st & 2nd counts of the defendant's plea, or answer filed therein, for the following reasons, to wit: First, that neither of the same state facts sufficient to constitute a defense to the plaintiff's action.

ALFRED ENNIS.

Demurrer overruled and judgment accordingly for defendant. Pl'ff excepts.

GEO. W. McCRARY,
Circuit Judge.

DEC. 9, 1882.

(Endorsed:) No. 3242. U. S. circuit. Charles R. Bissell vs. Township of Spring Valley, &c. Demurrer. Filed Dec. 6, 1882. A. S. Thomas, clerk. Alfred Ennis, plaintiff's attorney.

44 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 27th day of November, 1882, proceedings were had, and appear of record, in words and figures following, to wit:

SATURDAY, *December* 9, 1882.

CHARLES R. BISSELL, PLAINTIFF,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE county of Cherokee, in the State of Kansas, defendant. } 3242.

The demurrer to the amended answer herein came on to be heard, and was argued by counsel, on consideration whereof the court does overrule said demurrer, to which the plaintiff excepts. The plaintiff refusing further to plead stands on his demurrer. It is therefore now by the court here considered, ordered, and adjudged that said defendant go hence without day and have and recover of and from said plaintiff its costs in this action expended, taxed at $; to which the plaintiff also excepts.

45 Supreme Court of the United States.

CHARLES R. BISSELL
vs.
THE TOWNSHIP OF SPRING VALLEY IN THE County of Cherokee, in the State of Kansas.

Know all men by these presents that we, Charles R. Bissell and Alfred Ennis are held and firmly bound unto the township of Spring Valley, in the county of Cherokee and State of Kansas, in the sum of two hundred dollars, to be paid to the said township of Spring Valley or its representatives, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated this 21st day of December, 1882.

Whereas the above-named Charles R. Bissell hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of Kansas:

Now, therefore, the condition of this obligation is such that if the above-named Charles R. Bissell shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

CHARLES R. BISSELL, [SEAL.]
By ALFRED ENNIS. [SEAL.]
ALFRED ENNIS. [SEAL.]

Approved Jan'y 8, 1883.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 3242. Charles R. Bissell vs. Township of Spring Valley. Bond. Filed Jan. 8, 1883. A. S. Thomas, clerk.

46 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America, for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy from the record of all the proceedings in the action of Charles R. Bissell vs. The Township of Spring Valley, in the county of Cherokee, in the State of Kansas, No. 3242 in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 23rd day of February, A. D. 1883.

[SEAL.] A. S. THOMAS, *Clerk.*

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the district of Kansas, greeting:

Because that in the records and proceedings, and also in the rendering of judgment in a suit before you between Charles R. Bissell, of the city, county, and State of New York, plaintiff, and the Township of Spring Valley, in the county of Cherokee, and State of Kansas, defendant, a manifest error has intervened, to the great damage of the said plaintiff, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment therein be given then under your seal you do distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning the same, and this writ, so that you have the same before the Supreme Court of the United States on the second Monday of October, 1883, next, at Washington, D. C., being the present seat of the National Government, that the record and proceedings aforesaid being inspected by the said Supreme Court, it may cause further to be done therein, what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington, aforesaid, this 8th day of January, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and seventh.

[SEAL.] A. S. THOMAS, *Clerk.*

Allowed,

C. G. FOSTER, *Judge.*

(Indorsed:) No. 3242. Charles R. Bissel vs. Township of Spring Valley. Writ of error. Filed Jan. 8, 1883. A. S. Thomas, clerk. E.

48 UNITED STATES OF AMERICA, *ss:*

To the Township of Spring Valley, in the county of Cherokee, in the State of Kansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October, 1883, next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, in and for the district of Kansas, wherein Charles R. Bissell is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 8th day of January, 1883.

C. G. FOSTER, *Judge.*

STATE OF KANSAS,
County of Cherokee, ss:

The Township of Spring Valley, in the county of Cherokee, in the State of Kansas, hereby acknowledges service of the above and foregoing citation, and agrees to appear to the action therein named at the time and place therein named.

This January 8th, A. D. 1883.

J. R. HALLOWELL, *Att'y Def'ts.*
M. V. B. BENNETT, " " "
ROSSINGTON, JOHNSTON & SMITH.

(Indorsed:) No. 3242. Charles R. Bissell vs. Township of Spring Valley. Citation. Filed Jan. 8, 1883. A. S. Thomas, clerk. E.

(Indorsement on cover:) No. 880. Charles R. Bissell, plaintiff in error, vs. The Township of Spring Valley, Cherokee County, Kansas. Kansas C. C. U. S. Filed 7th June, 1883.

~~109-235~~

110-162

UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

OCTOBER TERM, A.D. 1883.

CHARLES R. BISSELL, *Plaintiff in Error*,

vs.

THE TOWNSHIP OF SPRING VALLEY, IN THE COUNTY OF CHEROKEE, IN THE STATE OF KANSAS, *Defendant in Error*.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF KANSAS.

ARGUMENT OF

ALFRED ENNIS,

Attorney for Plaintiff in Error.

ROCKWELL & CHURCHILL, PRINTERS, BOSTON.

UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

OCTOBER TERM, A.D. 1883.

CHARLES R. BISSELL, *Plaintiff in error*,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE COUNTY OF CHEROKEE, IN THE STATE OF KANSAS, *defendant in error*. } No. 880.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF KANSAS.

STATEMENT OF THE CASE.

This was a suit at law, commenced by the plaintiff in error against the defendant in error, in the Circuit Court of the United States, in and for the District of Kansas, on October 13, 1880, to recover the amount due upon three hundred and sixty-nine over-due interest coupons, for seventy dollars each, belonging to seventy-three certain *negotiable* bonds, for one thousand dollars each, issued by the defendant in error.

PETITION.

The petition was as follows, to wit:[1]

[1] See printed record, pp. 1 to 6, inclusive.

"PETITION.

"UNITED STATES OF AMERICA.—IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF KANSAS.

"CHARLES R. BISSELL, *Plaintiff*,

vs.

"THE TOWNSHIP OF SPRING VALLEY, IN THE COUNTY OF CHEROKEE, IN THE STATE OF KANSAS, *Defendant*.

"Charles R. Bissell, a resident of the city, county, and State of New York, and a citizen of the State of New York, plaintiff, complains of the Township of Spring Valley, in the county of Cherokee, in the State of Kansas, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Kansas, and a citizen of the State of Kansas, defendant, and says: that heretofore, to wit, on or about December 15th, A.D. 1871, in payment of a subscription to the capital stock of the Atlantic and Pacific Railroad Company, a railroad corporation duly organized and existing under and by virtue of the laws of the State of Kansas, and to aid in the construction of a railroad running within and through the corporate limits of the said defendant, the said defendant under and in pursuance of an act of the Legislature of the State of Kansas, entitled "An act to enable municipal townships to subscribe for stock in any railroad, and to provide for the payment of the same," approved February 25th, A.D. 1870, under and in pursuance of an order of the board of county commissioners of the county of Cherokee, in the State of Kansas, and under and in pursuance of a vote of more than three-fifths of the qualified voters of the defendant, voting at an election duly held therein for such purpose, made, issued, and delivered among others, there being one hundred and fifty in all, seventy-three certain negotiable bonds, all bearing date December 15th, A.D. 1871, whereby the said defendant by the terms and conditions contained in each of the said bonds, for value received, promised to pay, fifteen years after the date thereof, to the Atlantic and Pacific Railroad Company or bearer one thousand dollars, with interest thereon at the rate of seven per cent. per annum from the date thereof, payable annually, on July 1st in each year, with interest coupons therefor thereto attached. Both the principal and interest of each of the said bonds were made payable at the office of Northrup & Chick, in the city, county, and State of New York; which said bonds, in order to distinguish them from others of like character, were numbered 22, 23, 24, 25, 31, 36, 37, 38, 39, 40, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 78, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, and 150, a copy of each of which said bonds (except the number thereon) is filed herewith, made part hereof, and marked 'Exhibit A.'

"That afterwards, to wit, on December 15th, A.D. 1871, each of the said bonds, with all the interest coupons thereto attached, was put upon

the market and sold and delivered to *bona-fide* purchasers for value, the same passing from hand to hand like other negotiable securities.

"That afterwards, to wit, on April 11th, A.D. 1872, each of the said bonds, with all the interest coupons thereto attached, was duly registered in the office of the auditor of the State of Kansas, according to law, and the fact that each of the said bonds was so registered was then and there, under the hand and official seal of the said auditor, in writing, duly certified and endorsed upon each of the said bonds, a copy of which said certificate and endorsement is filed herewith, made part hereof, and marked 'Exhibit B.'

"That, attached to each of the said bonds numbered 31, 142, 143, 144, 145, 146, 147, and 148, among others, were six interest coupons, being the first, second, third, fourth, fifth, & sixth interest coupons thereto attached, and maturing on July 1st, A.D. 1872; July 1st, A.D. 1873; July 1st, A.D. 1874; July 1st, A.D. 1875; July 1st, A.D. 1876, and July 1st, A.D. 1877.

"That, attached to each of the said bonds numbered 149 & 150, among others, were five interest coupons, being the first, third, fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A.D. 1872; July 1st, A.D. 1874; July 1st, A.D. 1875; July 1st, A.D. 1876, and July 1st, A.D. 1877.

"That, attached to each of the said bonds numbered 62, 63, 66, 67, 68, 70, 71, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, and 139, among others, were four interest coupons, being the third, fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A.D. 1874; July 1st, A.D. 1875; July 1st, A.D. 1876, and July 1st, A.D. 1877.

"That, attached to each of the said bonds numbered 22, 24, 31, and 98, among others, were three interest coupons, being the fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A.D. 1875; July 1st, A.D. 1876, and July 1st, A.D. 1877.

"That, attached to each of the said bonds numbered 23, 25, 36, 37, 38, and 39, among others, were two interest coupons, being the fifth and sixth interest coupons thereto attached, and maturing on July 1st, A.D. 1876, and July 1st, A.D. 1877.

"That, attached to the said bond numbered 64, among others, were three interest coupons, being the third, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A D. 1874; July 1st, A.D. 1876, and July 1st, 1877.

"That, attached to the said bond numbered 65, among others, were four interest coupons, being the third, fourth, fifth, and sixth interest coupons thereto attached, and maturing on July 1st, A.D. 1874; July 1st, A.D. 1875; July 1st, A.D. 1876, and July 1st, A.D. 1877.

"That, attached to each of the said bonds numbered 92, 93, 94, 95, and 96, among others, were two interest coupons, being the third and fourth

interest coupons thereto attached, and maturing on July 1st, A.D. 1874, and July 1st, A.D. 1875.

"That, attached to the said bond numbered 40, among others, was one interest coupon, being the fifth interest coupon thereto attached, and maturing on July 1st, A.D. 1876.

"That, attached to the said bond numbered 69, among others, was one interest coupon, being the fourth interest coupon thereto attached, and maturing on July 1st, A.D. 1875.

"That, attached to the said bond numbered 78, among others, was one interest coupon, being the third interest coupon thereto attached, and maturing on July 1st, A.D. 1874.

"That, attached to each of the said bonds numbered 140 and 141, among others, was one interest coupon, being the second interest coupon thereto attached, and maturing on July 1st, A.D. 1873.

"That, by the terms and conditions of each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of the said bonds, as hereinbefore stated, the said defendant promised to pay to the treasurer of the Atlantic and Pacific Railroad Company or bearer, at the maturity thereof, the sum of seventy dollars ($70.00).

"That each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of the said bonds, as hereinbefore stated, except the number of the bond referred to thereon, is as follows, to wit:

"$70.] "COUNTY OF CHEROKEE, KANSAS. [$70.

"COLUMBUS, December 15th, 1871.

"The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company, or bearer, at the office of Northrup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

"WM. H. CLARK,

"*Chairman Board of County Commissioners.*

"Attest: J. G. DUNLAVY,

"*County Clerk.*

"$70.] "COUNTY OF CHEROKEE, KANSAS. [$70.

"COLUMBUS, December 15th, 1871.

"The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company, or bearer, at the office of Northrup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

"WM. H. CLARK,

"*Chairman Board of County Commissioners.*

"Attest: J. G. DUNLAVY,

"*County Clerk.*

"$70.] "COUNTY OF CHEROKEE, KANSAS. [$70.

"COLUMBUS, December 15th, 1871.

"The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company, or bearer, at the office of Northrup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

"WM. H. CLARK,
"*Chairman Board of County Commissioners.*

"Attest: J. G. DUNLAVY,
"*County Clerk.*

"$70.] "COUNTY OF CHEROKEE, KANSAS. [$70.

"COLUMBUS, December 15th, 1871.

"The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company, or bearer, at the office of Northrup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to said Atlantic and Pacific Railroad Company.

"WM. H. CLARK,
"*Chairman Board of County Commissioners.*

"Attest: J. G. DUNLAVY,
"*County Clerk.*

"$70.] "COUNTY OF CHEROKEE, KANSAS. [$70.

"COLUMBUS, December 15th, 1871.

"The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company, or bearer, at the office of Northrup & Chick, in the city of New York, seventy dollars, the interest on bond No. , payable to the Atlantic and Pacific Railroad Company.

"WM. H. CLARK,
"*Chairman Board of County Commissioners.*

"Attest: J. G. DUNLAVY,
County Clerk.

"$70.] "COUNTY OF CHEROKEE, KANSAS. [$70.

"COLUMBUS, December 15th, 1871.

"The Township of Spring Valley will pay to the treasurer of the Atlantic and Pacific Railroad Company, or bearer, at the office of Northrup & Chick, seventy dollars, the interest on bond No. , payable to the Atlantic and Pacific Railroad Company.

"WM. H. CLARK,
"*Chairman Board of County Commissioners.*

"Attest: J. G. DUNLAVY,
"*County Clerk.*

"That, after the issuing and delivering of each of the said bonds, the registration thereof, and before the maturity of either of the said bonds, or either of the said first, second, third, fourth, fifth, and sixth interest coupons thereto attached, each of the said bonds, with the said interest coupons thereto attached, were sold and delivered to the plaintiff for the price of ninety cents on the dollar thereof, cash, a valuable consideration.

"That when each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of said bonds, as hereinbefore stated, became due and payable, the same was duly presented at the place where the same is made payable, and the payment thereof demanded and refused.

"That each of the said first, second, third, fourth, fifth, and sixth interest coupons attached to each of the said bonds, as hereinbefore stated, there being in all three hundred and sixty-nine of the same, for seventy dollars each, and in the aggregate amounting to twenty-five thousand eight hundred and thirty dollars, with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1872; with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1873; with interest on four thousand two hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1874; with interest on four thousand three hundred and forty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1875; with interest on four thousand four hundred and eighty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1876; and with interest on four thousand four hundred and ten dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1877, remain due and wholly unpaid.

"Wherefore the plaintiff prays judgment against the said defendant for twenty-five thousand eight hundred and thirty dollars, with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1872; with interest on seven hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1873; with interest on four thousand two hundred dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1874; with interest on four thousand three hundred and forty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1875; with interest on four thousand four hundred and eighty dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1876; and with interest on four thousand four hundred and ten dollars thereof, at the rate of seven per cent. per annum, since July 1st, A.D. 1877, together with all other proper relief.

"ALFRED ENNIS,

"*Attorney for Plaintiff.*"

"EXHIBIT A."

"No.] "UNITED STATES OF AMERICA. [$1,000.

"COUNTY OF CHEROKEE, STATE OF KANSAS.

"SPRING VALLEY TOWNSHIP BOND.

"Know all men by these presents that Spring Valley Township, county of Cherokee, State of Kansas, acknowledges itself and is firmly bound to the Atlantic & Pacific Railroad Company in the sum of one thousand dollars, which sum the said township therein promises to pay to the said Atlantic & Pacific Railroad Company, or bearer, at the office of Northrup & Chick, in the city of New York, and State of New York, on the fifteenth day of December, 1886, together with the interest on the first day of July in each and every year until this bond matures, at the rate of seven per cent. per annum, which interest shall be payable annually on the presentation and delivery at said office of the coupons of interest hereto attached.

"This bond being issued under and pursuant to an order of the board of county commissioners of Cherokee county, in the State of Kansas, by virtue of an act of the legislature of the State of Kansas, approved February 25, 1870, entitled, 'An act to enable municipal townships to subscribe for stock in any railroad and to provide for the payment of the same'; and authorized by a vote of the people taken on the 4th day of February, 1871, as required by law upon the proposition to subscribe one hundred and fifty thousand dollars to aid in the construction of the said railroad, which proposition was voted upon the day aforesaid, and three-fifths of the votes of said township being cast in favor of said proposition.

"In testimony whereof the said board of county commissioners of Cherokee county have executed this bond by the chairman of said board, under the order thereof, signing his name hereunto, and by the clerk of said board attesting the same and affixing the seal of said board.

"This done at Columbus, Cherokee county, this 15th day of December, 1871.

WILLIAM H. CLARK,

"{SEAL OF CHEROKEE COUNTY, KANSAS.} *Chairman Board of County Commissioners.*

"*Attest:* J. G. DUNLAVY,
County Clerk.

"EXHIBIT B."

"I, A. Thoman, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued, that the signatutes thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the legislature, entitled, 'An act to authorize counties, incorporated cities, and municipal townships, to issue bonds for the purpose of building bridges, aiding in the construction of railroads,

or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith,' approved March 2, 1872.

"Witness my hand and official seal this 11th day of April, 1872.

[SEAL.] "A. THOMAN,
"*Auditor of State.*"

There was printed across the face of each of the interest coupons, in large colored figures, the number thereof in the order in which the same matured, commencing with No. 1, for the *first year*, and continuing up to No. 15, for the *fifteenth or last year*.

ANSWER.

On December 6th, 1882, the defendant in error filed an answer in *two counts*, to the plaintiff in error's petition, as follows, to wit: [1]

"IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

"CHARLES R. BISSELL, *Plaintiff*,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE COUNTY OF CHEROKEE, IN THE STATE OF KANSAS, *Defendant*. } *Answer.*

"Now comes the said defendant, by J. R. Hallowell, M. V. B. Bennett, and Rossington, Johnston & Smith, its attorneys, and for answer to the allegations set out in plaintiff's petition herein, says: —

"That it ought not to be charged with the said supposed debt by virtue of the said supposed bonds and coupons, because it, by its attorneys, says that J. G. Dunlavy, whose name appears on said bonds and coupons as county clerk, never signed his name thereto or thereon, nor ever authorized any party or parties to sign his name thereto or thereon, and that said signature is not his signature.

"Nor did he affix or authorize to be affixed the seal of said county of Cherokee to said bonds or coupons.

"2d. For further answer this defendant says, that it ought not to be charged with said supposed debt by virtue of said supposed coupons men-

[1] See printed record, pp. 22 and 23.

tioned in said petition of plaintiff, and shown by the averments of said petition to have matured in July, 1872, 1873, 1874, and 1875, the same having become due more than five years before the 13th of October, 1880, the date of the commencement of this action, the same being barred by the Statute of Limitations.

"Therefore defendant prays judgment and its costs herein expended."

"J. R. HALLOWELL,"
"M. V. B. BENNETT, &
"ROSSINGTON, JOHNSTON & SMITH."
"*Att'ys for Defendants.*"

STATE OF KANSAS,
County of Shawnee, ss.:

J. R. Hallowell, being duly sworn according to law, says that he is one of the attorney's of the Township of Spring Valley, in the county of Cherokee, and State of Kansas, the defendant in the above-entitled action; that he has read the foregoing plea; that he knows the contents thereof; and that the matters and things therein stated relative to the non-execution of the bonds and coupons sued on herein are true and correct of his own personal knowledge.

J. R. HALLOWELL.

Subscribed and sworn to before me this 6th day December, A.D. 1882.
[SEAL.] A. S. THOMAS, *Clerk.*

DEMURRER.

On December 6th, 1882, the plaintiff in error filed a demurrer to the *first* and *second counts* of the defendant in error's answer, as follows, to wit: [1]

"UNITED STATES OF AMERICA: IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF KANSAS.

"CHARLES R. BISSELL, *Plaintiff*,
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE COUNTY OF CHEROKEE, IN THE STATE OF KANSAS,
Defendant.
} *Demurrer.*

"Charles R. Bissell, the plaintiff in the above and foregoing entitled suit, demurs separately to each of the *first* and *second counts* of the defendant's answer filed therein, for the following reasons, to wit:

"*First.* That neither of said counts state facts sufficient to constitute a defence to the plantiff's action."

"ALFRED ENNIS,
"*Attorney for Plaintiff.*"

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[1] See printed record, pp. 23 and 24.

Ruling of the Court on the Demurrer.

On December 9th, 1882, the Court overruled the demurrer, to which ruling the plaintiff in error, at the time, excepted.[1]

Judgment.

On December 9th, 1882, judgment was rendered in favor of the defendant in error, and against the plaintiff in error, for cost, etc., to the rendering of which judgment the plaintiff in error, at the time, excepted.[2]

Bond, Writ of Error, and Citation.

On January 8th, 1883, the plaintiff in error filed the necessary bond for cost and writ of error, whereupon citation was issued and served on the defendant in error.[3]

Assignment of Errors.

The plaintiff in error assigns errors as follows, to wit: —

First. That the Court erred in overruling the plaintiff in error's demurrer to the *first count* of the defendant in error's answer.

Second. That the Court erred in not sustaining the plaintiff in error's demurrer to the *first count* of the defendant in error's answer.

Third. That the Court erred in rendering judgment in favor of the defendant in error, and against the plaintiff in error for cost, etc.

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[1] See printed record, page 24.

[2] See printed record, page 24.

[3] See printed record, pp. 24, 25, and 26.

Fourth. That the Court erred in not rendering judgment in favor of the plaintiff in error and against the defendant in error, as prayed for in plaintiff in error's petition.

WHEREFORE, The plaintiff in error prays that said ruling and judgment be in all things reversed, annulled, and held for nought.

ARGUMENT.

The *first*, *fifth*, and *sixth* sections of Chapter 90 of the Laws of Kansas, of 1870,[1] being the law under and in pursuance of which the bonds were issued, were as follows, to wit: —

"SECTION 1. Whenever *fifty* of the *qualified voters*, they being freeholders, of any municipal township in any county in the State, *shall petition* in writing the board of county commissioners of such county to submit to the qualified voters of such township, a proposition to take stock, in the name of such township, in any railroad proposed to be constructed into or through such township, and shall in such petition designate the railroad company and the amount of stock proposed to be taken, and the mode and terms of payment for the same, together with the conditions of such subscription, if any, *it shall be the duty* of such board of county commissioners to cause an election to be held by the qualified voters of such township, to determine whether such subscription shall be made: *Provided*, That the amount of bonds voted by any township shall not be above such an amount as will require a levy of more than one per cent. per annum on the taxable property of such township to pay the yearly interest on the amount of bonds issued."

"SECTION 5. If *three-fifths* of the electors voting at such election vote *for the subscription* of the stock, the board of county commissioners SHALL ORDER THE COUNTY CLERK to make such subscription in the name of the township, and *shall cause* such bonds as may be required by the terms of said vote and subscription *to be issued* in the name of such township, to *be signed* by the chairman of the board, and *attested* by the clerk, *under the seal of the county; Provided*, That the commissioners shall not cause such bonds to be issued until the railroad shall have been completed through the township voting such bonds, or to such point in said township as may be conditioned in said bonds.

[1] See Laws of Kansas, of 1870, page 189.

"SECTION 6. Whenever any bonds shall be issued in pursuance of the foregoing provisions, *it shall be the duty* of the board of county commissioners annually to proceed to levy and collect a tax on all the taxable property in such township, sufficient to pay the interest on such bonds as the same becomes due, and to create a sinking-fund sufficient to pay said bonds at maturity; and such tax shall be collected in cash or the coupons of such bonds which may be due; and such tax shall be collected as county and township taxes are collected, and paid out by the treasurer, on presentation of the coupons, or bonds, when due, and the county clerk, treasurer, and other officers, who may be required to do any act under the foregoing provisions, shall be entitled to the same fees as are allowed by law for similar services, and liable to the same fines and penalties for non-compliance."

The petition alleged that the bonds *were voted, issued,* and *delivered according to law;* that they *were put upon the market and* SOLD TO BONA-FIDE PURCHASERS FOR VALUE; THAT THEY WERE REGISTERED IN THE OFFICE OF THE AUDITOR OF STATE, ACCORDING TO LAW; that *after the voting, issuing, delivering, selling upon the market* TO BONA-FIDE PURCHASERS FOR VALUE, *and the* REGISTRATION OF THE SAME, *they were sold and delivered to the plaintiff in error,* A BONA-FIDE PURCHASER FOR VALUE.[1]

The bonds *were regular and in due form,* SIGNED BY THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS, WITH THE NAME OF THE COUNTY CLERK SIGNED, AND THE SEAL OF THE COUNTY AFFIXED, THERETO, and with *recitals* upon the *face thereof,* as follows, to wit:[2]

"This bond, being issued *under and pursuant to an "order of the board of county commissioners of Cherokee "county, in the State of Kansas, by virtue of an act of the "legislature of the State of Kansas,* approved February "25, 1870, entitled, 'An Act to enable municipal town-"ships to subscribe for stock in any railroad, and provide

[1] See ante, pp. 2 to 8 inclusive.
[2] See ante, page 7.

"for the payment of the same'; AND AUTHORIZED BY A "VOTE OF THE PEOPLE, taken on the 4th day of Febru- "ary, 1871, AS REQUIRED BY LAW, upon the proposition "to subscribe one hundred and fifty thousand dollars to "aid in the construction of the said railroad, which "proposition was voted upon on the day aforesaid, and "THREE-FIFTHS OF THE VOTES OF SAID TOWNSHIP BEING "CAST IN FAVOR OF SAID PROPOSITION.

"IN TESTIMONY WHEREOF the said BOARD OF COUNTY "COMMISSIONERS OF CHEROKEE COUNTY HAVE EXECUTED "THIS BOND BY THE CHAIRMAN OF SAID BOARD, UNDER "THE ORDER THEREOF, SIGNING HIS NAME HEREUNTO, "AND BY THE CLERK OF SAID BOARD ATTESTING THE "SAME AND AFFIXING THE SEAL OF SAID BOARD. This "done at Columbus, Cherokee county, this 15th day of "December, 1871."

The *certificate of registration* endorsed upon the bonds was to the effect, that, THEY HAD BEEN REGULARLY AND LEGALLY ISSUED; THAT THE SIGNATURES THERETO WERE GENUINE, AND THAT THE SAME HAD BEEN REGISTERED IN THE OFFICE OF THE AUDITOR OF STATE ACCORDING TO LAW.[1]

The *allegations* in the petition, the *recitals* upon the *face of the bonds*, and the CERTIFICATE OF REGISTRATION endorsed upon the bonds, *were all admitted to be true*, NO DENIAL BEING FILED THERETO.

Section 128, of Chapter 80, of the Compiled Laws of Kansas of 1879,[2] which was in force when this suit was commenced, and which is still in force, was as follows, to wit: —

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[1] See ante, pages 7 and 8.

[2] See Compiled Laws of Kansas, of 1879, page 618.

"SECTION 128. Every *material allegation* of the petition *not controverted by the answer*, and every material allegation of new matter in the answer, not controverted by the reply, *shall, for the purpose of the action, be taken as true.*"

The answer was in *two counts.*[1]

The *first count* merely alleged that J. G. Dunlavy, whose name appears upon the bonds as county clerk, never signed, or authorized to be signed, his name to the same, nor did he affix, or authorize to be affixed, the seal of the county, thereto.

This count *failed* to *negative* or *deny* that the name of J. G. Dunlavy as county clerk WAS SIGNED to the bonds BY A DEPUTY COUNTY CLERK, who, *ex-officio*, could have lawfully signed such name thereto. It also *failed* to *negative* or *deny* that the seal of the county WAS AFFIXED to the bonds BY THE BOARD OF COUNTY COMMISSIONERS, OR BY A DEPUTY COUNTY CLERK, either of whom could have lawfully affixed such seal thereto.

The *second count* merely alleged that the defendant in error should not be charged with the interest coupons sued, on maturing more than five years before suit was commenced thereon.

It is here admitted that the interest coupons sued on, maturing in July, 1872, 1873, 1874, and 1875, became due and payable more than five years before suit was commenced thereon, and that the same were, at the time suit was commenced thereon, barred by the Statute of Limitations; therefore, the demurrer to the *second count* of the answer was correctly overruled, and the same will not be hereafter referred to in the argument.

The *demurrer* to the *first count* of the answer raises the

[1] See ante, pages 8 and 9, inclusive.

only questions presented for the consideration of this Court.

The *demurrer* to the *first count* of the answer should have been sustained for the following reasons, to wit: —

FIRST. That it *was not necessary* to the validity of the bonds that they should have been *attested* by the *county clerk*, and the *seal* of the county *affixed* thereto *by him*.

SECOND. That the *name* of the *county clerk* could have been lawfully *signed* to the bonds *by a deputy county clerk*, and the *seal* of the county could have been lawfully *affixed* to the bonds *by the board of county commissioners*, or *by a deputy county clerk*.

THIRD. That the seal of the county *being affixed* to to the bonds was *prima-facie* evidence that it *was so affixed by the proper authority*, and the *burden* is upon the defendant in error to *establish the contrary*.

FOURTH. That the bonds *having been issued and delivered* by the *legal representatives of the defendant in error*, with the *name* of the *county clerk signed*, and the *seal* of the county *affixed thereto*, ESTOPS the defendant in error from *denying* the genuineness of the signature of such *clerk*, or the authority for affixing such *seal*, as against the plaintiff in error, *a bona-fide holder for value*.

FIFTH. That the *recitals* upon the *face of the bonds* that they *were issued according to law*, and that the board of county commissioners *had executed the same*, by the chairman of said board, *under the order thereof, signing his name thereto, and by the county clerk attesting the same and affixing the seal of the county thereto*, ESTOPS the defendant in error from *denying* the *facts* so *recited*, as against the plaintiff in error a *bona-fide holder for value*.

SIXTH. That the REGISTRATION of the bonds, in the office of the auditor of State, *according to law*, was *a final and conclusive determination* THAT THE SAME HAD BEEN REGULARLY AND LEGALLY ISSUED, AND THAT THE SIGNATURES THERETO WERE GENUINE, and such facts *cannot* now be inquired into as against the plaintiff in error a *bona-fide holder for value*.

The foregoing reasons will be noticed in the order in which they have been stated, and in the discussion of the same no attempt will be made to anticipate the argument of learned counsel for the defendant in error.

I.

IT WAS NOT NECESSARY TO THE VALIDITY OF THE BONDS THAT THEY SHOULD HAVE BEEN ATTESTED BY THE COUNTY CLERK, AND THE SEAL OF THE COUNTY AFFIXED THERETO BY HIM.

When the bonds *were voted* it *was the duty* of the board of county commissioners to *cause the same* to be *issued*, signed by the chairman of the board, attested by the county clerk, with the seal of the county affixed thereto. The board *alone* had *exclusive authority* to *cause the bonds to be issued*. The board could cause its chairman to sign the bonds, the county clerk to attest the same, and the seal of the county to be affixed thereto.

The county clerk was merely *a clerk* for the board, having no control or authority in the matter whatever.[1] It was the duty of the county clerk to attest the bonds when commanded to do so by the board. The county clerk *had no discretion in the matter*. If the county clerk had re-

[1] See *The State ex rel.* vs. *Allen*, 5 Kansas, 221.

fused to attest the bonds *his action could not* have prevented the board from issuing and delivering the bonds. If the county clerk, who was merely *a clerk* for the board, by refusing to obey the lawful commands of the board, could have defeated the action of the board, then he would have exercised *authority* and *control* over the board, and could thus have defeated the will of *three-fifths* of the qualified voters. The county clerk could thus have *dictated* what *might be* or what *might not be* done. The law did not contemplate any such thing.

The *attesting* by the county clerk was a *witnessing* by him of the execution of the bonds, and nothing more. When the bonds *were issued*, signed by the chairman of the board, with the seal of the county affixed thereto, they became *valid* and *binding* obligations, *with* or *without* the *attesting* or *witnessing* of the county clerk. It was *not necessary* to the validity of the bonds that the county clerk should have *attested* or *witnessed* the same.

The law *did not* make it the *duty* of the county clerk to affix the seal of the county to the bonds,[1] therefore it *was not necessary* to the validity of the bonds that the seal of the county should have been affixed thereto *by the county clerk*.

II.

THE NAME OF THE COUNTY CLERK COULD HAVE BEEN LAWFULLY SIGNED TO THE BONDS BY A DEPUTY COUNTY CLERK, AND THE SEAL OF THE COUNTY COULD HAVE BEEN LAWFULLY AFFIXED TO THE BONDS BY THE BOARD OF COUNTY COMMISSIONERS, OR BY A DEPUTY COUNTY CLERK.

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[1] See Section 5, Chapter 90, of the Laws of Kansas. of 1870, page 189. Ante, page 11.

It was the *duty* of the county clerk to appoint a *deputy*, who, in the absence or disability of such clerk, or in case of a vacancy in his office, could perform *all the duties of the clerk*.

Article 3, of Chapter 25, of the General Statutes of Kansas, of 1868, which was in force at the time the bonds were issued,[1] and which is still in force,[2] provides for the election, etc., of *county clerks*. Section 41 is as follows, to wit: —

"SECTION 41. Every such clerk *shall appoint a deputy* in writing, under his hand, and shall file such appointment in his office; and such *deputy*, in case of the absence or disability of such clerk, or in case of a vacancy in his office, *shall perform all the duties of such clerk* during such absence, or until such vacancy shall be filled. Every such clerk may appoint *other deputies*, and his sureties shall be responsible, under his official bond, for the acts of all such deputies."

There was *no limitation* as to the *deputy's authority*. In the *absence* or *disability* of the *clerk* the *deputy was required to perform all the duties of the clerk*. The *deputy was not* required to sign *his name* as *deputy*, but *could sign the name of the clerk*, when necessary. The *deputy could have lawfully signed* the name of *the clerk* to the bonds. The *deputy* could lawfully execute tax deeds in the name of *the clerk*, by signing the name of *the clerk* thereto.[3] It is the prevailing practice of *deputies* to sign the name of *their principals*.

The board of county commissioners *were required* to have a seal, *and might alter the same at pleasure*.

The county clerk was required to keep the seal.

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[1] See General Statutes of Kansas, of 1868, page 263.

[2] See Compiled Laws of Kansas, of 1879, page 280.

[3] See *Amrine et al.* vs. *The Kansas Pacific R.R. Co.*, 7 Kansas, 178; *Whitford* vs. *Lynch*, 10 Kansas, 180; *Haines* vs. *Lindsey*, 4 Ohio, 88; *Jacobs vs. Measures*, 13 Gray, 74.

The seal could be affixed to contracts or other obligations either by the board of county commissioners or by the county clerk or his deputy.

Article 2, of Chapter 25, of the General Statutes of Kansas, of 1868, which was in force at the time the bonds were issued,[1] and wich is still in force,[2] provides for the election, etc., of *boards of county commissioners*. Section 25 is as follows, to wit: —

"SECTION 25. Every board of county commissioners SHALL HAVE A SEAL, AND MAY ALTER THE SAME AT PLEASURE. They shall sit with open doors, and all persons conducting in an orderly manner may attend their meetings; and they may establish rules and regulations to govern the transaction of their business."

Section 43, of Chapter 25, of the General Statutes of Kansas, of 1868, which was in force at the time the bonds were issued,[3] and which is still in force,[4] is as follows, to wit: —

"SECTION 43. The county clerk shall keep his office at the county seat; *shall attend the sessions of the board of county commissioners, either in person* or *by deputy;* keep the seals, records, and papers of the said board of commissioners, and shall sign the records of the proceedings of the board of commissioners, and attest the same with the seal of the county."

There was *no statutory designation* as to *who* should affix the seal of the county to contracts or other obligations; hence *it could have been lawfully done*, either by the board of county commissioners, who had the seal and could alter the same at pleasure, or by the county clerk or his deputy,

[1] See the General Statutes of Kansas, of 1868, page 254.
[2] See Compiled Laws of Kansas, of 1879, page 277.
[3] See General Statutes of Kansas, of 1868, page 263.
[4] See Compiled Laws of Kansas, of 1879, page 280.

who kept the seals, records, and papers of the board of county commissioners.

III.

THE SEAL OF THE COUNTY BEING AFFIXED TO THE BONDS, WAS PRIMA-FACIE EVIDENCE THAT IT WAS SO AFFIXED BY THE PROPER AUTHORITY, AND THE BURDEN IS UPON THE DEFENDANT IN ERROR TO ESTABLISH THE CONTRARY.

That the seal of the county was affixed to the bonds by the proper authority IS NOT CONTROVERTED.

The answer *merely alleges* that the *county clerk* did not affix, or authorize to be affixed, the seal of the county to the bonds; but *does not deny* that the seal *was affixed* by the *proper authority*.

The law upon the subject may be briefly stated as follows, to wit: The seal of a corporation affixed to an instrument is *prima-facie* evidence that it *was so affixed by the proper authority*, and it *lies* with the party *objecting* to the same to *establish the contrary*.[1]

IV.

THE BONDS HAVING BEEN ISSUED AND DELIVERED BY THE LEGAL REPRESENTATIVES OF THE DEFENDANT IN ERROR, WITH THE NAME OF THE COUNTY CLERK SIGNED, AND THE SEAL OF THE COUNTY AFFIXED, THERETO, ESTOPS THE DEFENDANT IN ERROR FROM DENYING THE GENUINENESS OF THE SIGNATURE OF

[1] See 1 Kyd on Corporations, page 268; Angell and Ames on Corporations, Section 224; *Levitt* vs. *Steam Saw Mill Association*, 6 Paige's ch., page 54, at page 60; *Clark* vs. *The Imperial Gas Light and Coke Co.*, 4 Barnwell and Alderson, page 315; *Solomon's Lodge* vs. *More & Mellin*, 58 Ga., page 547; *Reed* vs. *Bradley*, 17 Ill., page 321; *St. Johns Church* vs. *Steinmetz*, 18 Penn. State, page 273.

SUCH CLERK, OR THE AUTHORITY FOR AFFIXING SUCH SEAL, AS AGAINST THE PLAINTIFF IN ERROR, A BONA-FIDE HOLDER FOR VALUE.

The board of county commissioners, the legal representative of the defendant in error, *issued* and *delivered* the bonds. The bonds *when so issued and delivered* were regular and in due form, *signed* by the chairman of the board, with the name of the county clerk *signed*, and the seal of the county *affixed*, thereto. The bonds *were intended* to be valid and binding obligations. The genuineness of the signatures of the officers signing, and the affixing of the seal of the county to, the bonds, *were* thus *adopted* and *approved* by the defendant in error, which is now *estopped* from denying the same.

In the recent case of *Town of Weyanwega* vs. *Ayling*,[1] which was a suit involving the validity of town bonds, signed by C. M. Fenelon as chairman of the board of supervisors of the town, and by C. A. Verke as clerk of the town, but who *was not*, at the time, clerk of the town. The bonds being *signed* and delivered by the chairman of the board of supervisors, with the name of Verke as clerk, *signed* thereto, was held to be an *adoption* of such name as clerk, and to ESTOP the town from *denying* that Verke was clerk. CHIEF JUSTICE WAITE, in delivering the opinion of this Court, says: —

"The first question certified in this case is answered in "the affirmative. The legal voters of the town, by a vote "duly taken pursuant to statutory authority for that pur-"pose, directed the issue of the negotiable bonds in con-

[1] See 99 U.S., page 112, at pages 117, 118, 119.

"troversy. As soon as this vote was given, *it became the* "*duty* of the chairman of the board of supervisors and "the clerk of the town to *cause* the bonds to be made out "and delivered to the railroad company. Such was the "requirement of the statute under which the vote of the "town was taken. *The designated officers had no discre-* "*tion in the premises.*

"After the vote, an appropriate form of bond and cou- "pons was lithographed and printed, with blanks in the "bond for the signatures of the chairman and clerk. As "printed, the bonds bore date June 1, 1871. At that "time Fenelon was chairman and Verke clerk. The sig- "natures of these officers were lithographed and printed "on the coupons. Before the bonds were actually signed "by Verke, he *had resigned his office* and moved out of "the town. Another clerk *had been* appointed and *quali-* "*fied* in his place. Apparently to save the expense of a "new lithograph and another printing of the bonds, "Verke, after going out of office, *affixed his signature* to "those which had been printed. These bonds, so signed "by Verke and by Fenelon, who actually *was chairman at* "*the time*, were taken by Fenelon, and delivered to the "railroad company. This having been done, Ayling, the "defendant in error, purchased the bonds to which the "coupons sued on were attached, and paid their full value "without notice of any claim of defence to their due exe- "cution. Under these circumstances, WE THINK THE "TOWN IS ESTOPPED FROM PROVING THAT VERKE IN "FACT SIGNED THE BONDS AFTER HE WENT OUT OF "OFFICE. * * *. If a bank puts out a note for circula- "tion bearing the signature of one who was in fact presi- "dent of the bank when the note bore date, no one will

"pretend that it could be shown as a defence to the note "when sued upon by a *bona-fide* holder, that the signature "of the person purporting to be president was affixed after "he went out of office. So if one puts out a note PUR- "PORTING TO BE SIGNED BY HIMSELF, BUT WHICH WAS "IN FACT SIGNED BY ANOTHER, HAVING, AT THE TIME, "NO AUTHORITY FROM HIM, he *cannot* prove the forgery "or *want of authority* in the signer as against a *bona-fide* "holder. The reason is obvious. The bank, by issuing "the note, and the individual, by delivering the paper "which purported to be his obligation, *adopted what they* "*thus put out as their own, and became bound accordingly.*

"The same principle applies in this case. There is no "pretence that the obligation of these bonds is other or "different from that authorized by the voters. . . . "No bad faith is imputed to any one. It is true the chair- "man alone made the actual delivery to the railroad com- "pany; but the presumption is, that what he did was "assented to by the clerk in office at the time. Cer- "tainly it could not have been contemplated that, to "make a binding obligation, both the chairman and clerk "must have been present when the delivery to the railroad "company was made; and as the presumption always is, "in the absence of anything to the contrary, that a public "officer while acting in his official capacity is performing "his duty, it must be *assumed* for all the purposes of this "case that the bonds *were delivered* to the railroad com- "pany by the chairman with the assent of the clerk, and, "therefore, that they were issued as negotiable instru- "ments by the proper officers of the town."

V.

THE RECITALS UPON THE FACE OF THE BONDS THAT THEY WERE ISSUED ACCORDING TO LAW, AND THAT THE BOARD OF COUNTY COMMISSIONERS HAD EXECUTED THE SAME BY THE CHAIRMAN OF THE BOARD, UNDER THE ORDER THEREOF, SIGNING HIS NAME THERETO, AND BY THE COUNTY CLERK ATTESTING THE SAME AND AFFIXING THE SEAL OF THE COUNTY THERETO, ESTOPS THE DEFENDANT IN ERROR FROM DENYING THE FACTS SO RECITED, AS AGAINST THE PLAINTIFF IN ERROR A BONA-FIDE HOLDER FOR VALUE.

The bonds *recited* upon the face thereof that they *were issued* in payment for a subscription to the capital stock of a railroad company named; under and in pursuance of an act of the legislature named; under and in pursuance of a vote of the qualified electors of the defendant in error, at an election named, *three-fifths* of the votes being cast *in favor thereof;* under and in pursuance of an *order* of the board of county commissioners; *and* that the BOARD OF COUNTY COMMISSIONERS HAD EXECUTED THE SAME BY THE CHAIRMAN OF THE BOARD, UNDER THE ORDER THEREOF, SIGNING HIS NAME THERETO, AND BY THE COUNTY CLERK ATTESTING THE SAME, AND AFFIXING THE SEAL OF THE COUNTY THERETO.[1]

These *recitals* contain not only the *usual* and *ordinary statements*, to wit: that the bonds had been issued for a particular purpose, etc., in pursuance of law, etc., in pursuance of a vote, etc., and in pursuance of an order of the proper authority, etc., but contain the *further* and

[1] See ante, pages 7, 12, and 13.

additional statements, to wit: THAT THE BOARD OF COUNTY COMMISSIONERS HAD EXECUTED THE SAME BY THE CHAIRMAN OF THE BOARD, UNDER THE ORDER THEREOF, SIGNING HIS NAME THERETO, AND BY THE COUNTY CLERK ATTESTING THE SAME, AND AFFIXING THE SEAL OF THE COUNTY THERETO.

The bonds with such *further and additional statements*, *boldly engraved upon the face thereof*, *were issued and delivered* by the board of county commissioners, the legal representative of the defendant in error.

That the defendant in error is *now* ESTOPPED from *denying* any of the material facts so *recited*, is a proposition too well settled by the uniform rulings of this Court, for more than twenty-five years last past to now admit of argument in its support.[1]

Every person is bound to speak and act according to the *truth*, and the law will presume such to be done, and *will not* allow the presumption to be contradicted.

In KENT'S Commentaries (Comstock's edition),[2] the author says:—

"The sense of ESTOPPEL is, that a man, for the sake of "*good faith* and *fair dealing*, ought to be ESTOPPED from "saying that to be *false* which, *by his means*, has once be-

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[1] *Insurance Co.* vs. *Bruce*, 105 U. S., page 328; *Harter* vs. *Kernochan*, 103 U. S., page 562; *Menasha* vs. *Hazard*, 102 U. S., page 81; *Hackett* vs. *Ottawa*, 99 U. S., 86; *Town of Weyanwega* vs. *Ayling*, 99 U. S., 112; *Supervisors* vs. *Gabraith*, 99 U. S., 214; *Wilson* vs. *Salmanca Township*, 99 U. S., 499; *County of Warren* vs. *Marcy*, 97 U. S., 96; *San Antonio* vs. *Mehaffy*, 96 U. S., 312; *Town of Coloma* vs. *Graves*, 92 U. S., 484; *Town of Venice* vs. *Murdock*, 92 U. S., 494; *County of Moultrie* vs. *Rockingham Ten-Cent Savings-Bank*, 92 U. S. 631; *Marcey* vs. *Township of Oswego*, 92 U. S., 637; *Humboldt Township* vs. *Long et al.*, 92 U. S., 642; *Pompton* vs. *Cooper Union*, 101 U. S., 196; *The Mayor* vs. *Lord*, 9 Wallace, 409: *Supervisor* vs. *Schenck*, 5 Wallace, 772; *Moran* vs. *Com. Miami County*, 2 Black, 722; *Bissell* vs. *Jeffersonville*, 24 Howard, 287; *Knox County* vs. *Aspinwall*, 21 Howard, 539.

[2] See vol. 4, page 282.

"come accredited for *truth, and by his representations has "led others to act.*"

Corporations, including public or municipal, are bound by *estoppel in pais*, the same as natural persons.[1]

VI.

THE REGISTRATION OF THE BONDS IN THE OFFICE OF THE AUDITOR OF STATE, ACCORDING TO LAW, WAS A FINAL AND CONCLUSIVE DETERMINATION THAT THE SAME HAD BEEN REGULARLY AND LEGALLY ISSUED, AND THAT THE SIGNATURES THERETO WERE GENUINE, AND SUCH FACTS CANNOT NOW BE INQUIRD INTO, AS AGAINST THE PLAINTIFF IN ERROR, A BONA-FIDE HOLDER FOR VALUE.

The *fourteenth* and *fifteenth* sections of an act of the legislature of the State of Kansas, approved March 2d, 1872,[2] and known as the REGISTRATION LAW, were as follows, to wit:—

"SECT. 14. Within thirty days after the delivery of such bonds the holder thereof shall present the same to the auditor of State for registration, and the auditor shall, *upon being satisfied that such bonds have been issued according to the provisions of this act*, AND THAT THE SIGNATURES THERETO OF THE OFFICERS SIGNING THE SAME ARE GENUINE, REGISTER THE SAME IN HIS OFFICE, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall, under his seal of office, certify upon such bonds the fact THAT THEY HAVE BEEN REGULARLY AND LEGALLY ISSUED, THAT THE SIGNATURES THERETO ARE GENUINE, AND THAT SUCH BONDS HAVE BEEN REGIS-

[1] See Bigelow on Estoppel, 464; Herman's Law of Estoppel, 509 and 512; *Moran et al.* vs. *The Commissioners of Miami County*, 2 Black (U. S.), 722; *Zabriskie* vs. *Cleveland, etc., Railroad Company*, 23 Howard, 400; *Commissioners of Knox County* vs. *Aspinwall*, 21 Howard, 539; *Rogers* vs. *Burlington*, 3 Wallace, 654; *Pendleton County* vs. *Amy*, 13 Wallace, 297; *The Town of Keithsburg* vs. *Charles A. Frick*, 34 Ill., 405; *Royal British Bank* vs. *Turward*, 6 Ellis and Blackburne, 327; *Hale* vs. *Union, etc., Insurance Company*, 32 N. H., 295; *Trustees* vs. *Mayor et al., of Aberdeen*, 13 S. & M. 647.

[2] See Laws of Kansas of 1872, page 110.

TERED IN HIS OFFICE ACCORDING TO LAW, for which registration and certificate the auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof.

"SECT. 15. That the holder of bonds *heretofore issued*, or that may hereafter be issued, in pursuance of any contract heretofore made, under any law of this State, *may have the benefits of this act by having such bonds registered in the office of said auditor of State.* as *provided herein, for the registration of bonds issued by virtue hereof.* It shall be the duty of the auditor of State, upon the registration of any bonds not issued under the provisions of this act, within ten days thereafter, to notify the officers issuing the same, of such registration, which fact shall be entered by such officers in a book wherein the record of such bonds is kept, and such bonds shall thereafter be considered registered bonds."

The writer hereof drafted the said registration law, and is, therefore, familiar with its origin, purpose, and subsequent history.

At the time the law was enacted a reasonable degree of prosperity prevailed throughout the State, and, as a consequence, municipalities, such as counties, cities, and townships, were desirous of improving their condition, and to this end had been, or were then, issuing, or proposing to issue, their bonds, for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement. It was necessary to market such bonds abroad, where, by reason of a then prevailing distrust and want of confidence in the *regularity* and *legality* of the same, a fair price could not be obtained therefor. To remedy this condition of things was the *origin* and *purpose* of the *registration law*.

It was the intention to provide a STATE TRIBUNAL, which would command confidence and respect, to first *determine* if such bond had been *regularly* and *legally* issued, and if the *signatures* thereto were *genuine;* and if so to *enter* such *determination* in a book to be kept for that purpose, and thereupon to *indorse* and *certify* such

determination and *entry* upon such bonds; which *determination*, *entry*, *indorsement*, and *certificate*, should be FINAL and CONCLUSIVE as to the facts thus *determined*, *entered*, *indorsed*, and *certified*.

The auditor of State was designated as such TRIBUNAL, and to him was *committed* the *authority* to *determine* if such bonds had been *regularly* and *legally issued*, and if the *signatures thereto were genuine*, and if so, to *register* the same in his office, by *entering* such *determination* in a book to be kept for that purpose, and under his hand and seal of office, to thereupon *indorse* and *certify* such *determination* and *entry* upon such bonds, which should be FINAL and CONCLUSIVE.

The law was accordingly enacted, and thus the distrust which at the time prevailed was dispelled, confidence was restored, bonds that had been, or that were then, or that were subsequently issued, were *registered* in the office of the auditor of State, put upon the market, and sold abroad to *bona-fide* purchasers for value. As a consequence such municipalities prospered, and the *bona-fide* purchasers of such bonds, reposing confidence in the *determination* and *registration* of the auditor of State as being FINAL and CONCLUSIVE, were, for the time being, content.

Subsequently the financial crisis of 1873 came. Such municipalities then recognized the fact that they had burdened themselves with debt, and, unmindful of the injuries they would inflict upon others, and the discredit they would bring upon themselves, sought to avoid such indebtedness by technical objections to the validity of the same. The origin and purpose of the *registration law* was so completely lost sight of that it now requires the strong

arm of the court to remind such municipalities of the same.

Such was the origin, purpose, and subsequent history of the *registration law*.

The auditor of State, *clothed* with *authority* to do so, *determined* that the bonds HAD BEEN REGULARLY and LEGALLY ISSUED and THAT THE SIGNATURES THERETO WERE GENUINE, whereupon he *registered* the same in his office, *according to law*.

The auditor of State, *under his hand and seal of office*, endorsed upon the bonds his *certificate* of *registration*, to the effect that the bonds HAD BEEN REGULARLY AND LEGALLY ISSUED, THAT THE SIGNATURES THERETO WERE GENUINE, *and that the same had been registered in his office, according to law*.

This *determination* and *registration* by the auditor of State was FINAL and CONCLUSIVE, and cannot *now* be inquired into, as against the plaintiff in error a *bona-fide holder for value*.

In the recent case of *Lewis* vs. *the Board of County Commissioners of Barbour County*,[1] wherein the said *registration law* was construed, it was held that the same *conferred* upon the auditor of State *authority* to *determine* if bonds presented to him for *registration* thereunder, had been *regularly* and *legally* issued, and if the *signatures thereto were genuine*, and if so, to *register* the same in his office accordingly, AND THAT SUCH DETERMINATION AND REGISTRATION WAS FINAL AND CONCLUSIVE, as against a *bona-fide holder for value*. Justice HARLAN, delivering the opinion of this Court, says : —

[1] See 105 U.S., page 739, at pages 748 to 751, inclusive.

"The presumption is that the legislature, while aiming "to guard local communities against the fraudulent con- "duct of their officers, *intended also to afford, in some "degree, protection to those becoming, in good faith, pur- "chasers of municipal securities which those officers were "authorized to execute, and which they might put into "circulation or negligently permit to get into circulation.* "Hence, as we think, the requirement as to the registration "of bonds issued under the act, and the duty of the State "auditor, upon registration, *to attest their regularity and "legality by a certificate, under his seal of office.*

"The State treasurer may improperly surrender bonds "deposited with him for delivery only upon the perform- "ance of specified conditions. But such delivery would "not constitute them binding obligations upon the munici- "pality in whose name they are executed. The holder "is under a necessity by the statute to do something "more. He is required to present them for registration "to another officer, the auditor of the State, in whose "office was (if the county authorities obeyed the statute) "kept a record of the number, amount and character of "the bonds, to whom issued, and for what purpose. *And "that officer is not under a duty to admit the bonds to reg- "istration simply because asked to do so,* and without "making inquiry as to their regularity and legality. "*Unless satisfied that they are issued in accordance with "the provisions of the act, he is bound to deny the applica- "tion for registration. But if satisfied that the provisions "of the statute have been pursued, he is required to regis- "ter bonds and certify upon each one, under his seal of "office, that it has been regularly and legally issued. To*

"*him, therefore*, IS COMMITTED BY THE STATE, THE IMPOR-
"TANT FUNCTION OF FINALLY DETERMINING WHETHER THE
"LAW HAS BEEN IN ALL RESPECTS OBEYED, AND, CONSE-
"QUENTLY, WHETHER THE BONDS HAVE BEEN REGULARLY
"AND LEGALLY ISSUED. HIS DETERMINATION NECESSARILY
"INVOLVES AN INVESTIGATION AS TO EVERY FACT ESSEN-
"TIAL TO THEIR VALIDITY. PURCHASERS IN GOOD FAITH,
"ALTHOUGH REQUIRED TO KNOW WHAT THE STATUTE CON-
"TAINED, ARE NOT BOUND, UNDER SUCH CIRCUMSTANCES AS
"ARE HERE DISCLOSED, TO GO BEHIND THE AUDITOR'S
"CERTIFICATE, AND FIND OUT WHETHER THAT OFFICER HAS
"ASCERTAINED ALL THE FACTS, OR WHETHER HE HAS COR-
"RECTLY AND HONESTLY PASSED UPON THE QUESTIONS
"ARISING UPON AN APPLICATION FOR REGISTRATION. The
"investigation which the statute authorized the auditor to
"make involved the inquiry whether the bonds were of
"the class which should have passed through the hands of
"the treasurer, and also whether the conditions upon
"which they were deliverable had been performed. Pur-
"chasers have the right to assume — having no notice to
"the contrary — that he has, in these respects, discharged
"his duty. The registration acts, in some of the States,
"while imposing like duties upon State auditors, and re-
"quiring them (when the facts justified them in so doing)
"to certify upon municipal bonds that they have been
"issued in compliance with law, expressly declare such
"certificates to be *prima-facie* evidence only of the
"facts stated, and shall not prevent proof to the con-
"trary in any suit involving the validity of the bonds,
"or the power and authority of the municipality in whose
"name they are executed to issue them. (101 U.S.,

"694.) BUT THE STATUTE IN QUESTION CONTAINS NO "SUCH PROVISION. *The Legislature of Kansas con-* "*fers upon the auditor of State full authority to ascertain* "*and determine whether bonds presented for registration have* "*been issued in accordance with the statute, and if satisfied* "*such is the fact, it is made his duty to certify upon the* "*bonds that they have been regularly and legally issued.* "Had it appeared upon the face of these bonds that they "were deliverable upon certain terms, and therefore be- "longed to the class which should pass through the hands "of the State treasurer, and if the purchaser, in such a "case, be held to have taken the bonds subject to the "statutory requirement that they were not negotiable "unless they had been, in the first instance, actually "delivered by or in behalf of the county officers to the "State treasurer, and by the latter surrendered to the "proper parties, it is clear no such condition can be "attached to the purchase, by appellant. For the bonds "here in suit do not disclose the conditional nature of the "subscription, nor that they belonged to the class which, "as a condition precedent to their negotiability, must have "been delivered to the State treasurer. That these "facts were not disclosed upon the face of the bonds is "the fault of the county, and it is estopped, as against a "*bona-fide* purchaser, to deny that they were of the class "which might have been delivered at once, and without "going through the hands of the State treasurer, to the "auditor of State, and been by him registered and certi- "fied as regular and legally issued. IN SUCH A CASE, "AT LEAST THE ACTION AND CERTIFICATE OF THE AUDITOR "OF STATE MUST BE DEEMED CONCLUSIVE EVIDENCE, AS

"BETWEEN THE COUNTY AND A BONA-FIDE PURCHASER, "THAT THE BONDS WERE REGULARLY AND LEGALLY ISSUED, "AND THEREFORE NEGOTIABLE IN THE FULLEST SENSE OF "THAT WORD. IF SUCH BE NOT THE CONSTRUCTION OF "THE REGISTRATION ACT, IT IS DIFFICULT TO PERCEIVE OF "WHAT PRACTICAL VALUE IS SUCH CERTIFICATE, OR WHAT "THE LEGISLATURE INTENDED BY THE REQUIREMENT THAT "THE AUDITOR SHOULD, AFTER EXAMINATION INTO THE "FACTS, ATTEST THE REGULARITY AND LEGALITY OF THE "BONDS. If the determination of that officer, in this "case, operates hardly upon the people of the county, the "result must be attributed to the legislation in question as "well as to the negligence of the State and county officers. "*What we have said is in harmony with the settled doc-*"*trines of this Court upon the subject of negotiable securi-*"*ties issued by municipal corporations, as announced in* "*numerous cases with which the profession is familiar, and* "*which need not be here cited.*"

That the bonds were issued and delivered was well known to all the citizens, tax-payers, and voters of the defendant in error, the same having been ordered by a *vote* of *three-fifths* of the qualified electors, at a *public election* held for that purpose.

The bonds were issued and delivered on December 15th, 1871, and were *registered* in the office of the auditor of State on April 11th, 1872, *about four months after the same were issued and delivered.*

That during the *interval* of *four months* between the time of the *issuing* and *delivering* the bonds and the *registration* of the same, *no objection* was made to the bonds;

no notice was given to the public of any supposed defect in the execution of the bonds; *no attempt* was made to prevent the bonds being put upon the market and sold to *bona-fide* purchasers for value; *no notice* was given the auditor of State that it was claimed the county clerk never signed, or authorized to be signed, his name to the bonds, and never affixed, or authorized to be affixed, the seal of the county thereto; *no attempt* was made to prevent the auditor of State from *registering* the bonds in his office according to law; and now, TWELVE YEARS after the bonds were issued, delivered, sold upon the market to *bona-fide* purchasers for value, *registered* in the office of the auditor of State according to law, passed into the hands of the plaintiff in error a *bona-fide holder for value*, and, perhaps, after the board of county commissioners that issued and delivered the bonds, and the clerk or his deputy who signed the same, and may have affixed the seal of the county thereto, have passed away from this sphere of action, the defendant in error asks to be permitted to attempt to prove that the name of the county clerk signed to the bonds is not in the handwriting of the then county clerk, and that the seal of the county affixed to the bonds, is not so affixed in the artistic manner that the then county clerk would have affixed the same.

Equity and justice, as well as fair dealing between man and man, demand that judgment should be rendered in favor of the plaintiff in error, and against the defendant in error, as prayed for in the petition.

WHEREFORE, the plaintiff in error prays that the ruling of the Circuit Court, in overruling the demurrer to the

first count of the answer, and the rendering of judgment in favor of the defendant in error and against the plaintiff in error, be reversed.

ALFRED ENNIS,

Attorney for Plaintiff in Error.

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1883.

CHARLES R. BISSELL, *Plaintiff in Error,*
vs.
THE TOWNSHIP OF SPRING VALLEY, IN THE COUNTY OF CHEROKEE, IN THE STATE OF KANSAS, *Defendant in Error.*

Error to the Circuit Court of the United States, for the District of Kansas.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

W. H. ROSSINGTON,
Attorney for Defendant in Error.

J. R. HALLOWELL,
CHAS. B. SMITH,
Of Counsel.

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Error to the Circuit Court of the United States, for the District of Kansas.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

THE plaintiff sues upon certain pretended bonds and coupons, alleged to have been issued by the defendant township on the 15th day of December, A. D. 1871, under and by virtue of an act of the Legislature of the State of Kansas, entitled "An act to enable municipal townships to subscribe for stock in any railroad, and to provide for the payment of the same." The printed bonds are 150 in number, of one thousand dollars each, payable fifteen years after date, and alleged to have been issued to the Atlantic & Pacific Railroad or bearer, and made payable at the banking office of Northrup & Chick, in the city of New York. The suit is upon seventy-three of these bonds and attached coupons.

There is no allegation in the petition that any of the interest has ever been paid upon the bonds by the defendant township; and in fact none ever has been, and nothing is pleaded in the petition by way of estoppel, except the allegation of the execution of the bonds, the recital of the law, compliance with the same, and the registration of the bonds by the Auditor of State. To this petition an answer has been filed, which, treating these as in form negotiable instruments, amounts to a plea of *non est factum*. The answer, for the convenience of this argument, we herewith reprint:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

Charles B. Bissell, *Plaintiff*,
vs.
The Township of Spring Valley, in the County of Cherokee, in the State of Kansas, *Defendant*. } ANSWER.

Now comes the said defendant, by J. R. Hallowell, M. V. B. Bennett, and Rossington, Johnston & Smith, its attorneys, and for answer to the allegations set out in plaintiff's petition, says:

That it ought not to be charged with the said supposed debt by virtue of the said supposed bonds and coupons, because it, by its attorneys, says that J. G. Dunlavy, whose name appears on said bonds and coupons as County Clerk, never signed his name thereto or thereon, nor ever authorized any party or parties to sign his name thereto or thereon, and that said signature is not his signature.

Nor did he affix, or authorize to be affixed, the seal of said county of Cherokee to said bonds or coupons.

2d. For further answer, this defendant says, that it ought not to be charged with said supposed debt by virtue of said supposed coupons mentioned in said petition of plaintiff, and shown by the averments of said petition to have matured in July, 1872, 1873, 1874, and 1875, the same having become due more than five years before the 13th of October, 1880, the date of the commencement of this action, the same being barred by the statute of limitations.

Therefore, defendant prays judgment, and costs herein expended.

J. R. HALLOWELL,
M. V. B. BENNETT, and
ROSSINGTON, JOHNSTON & SMITH,
Attorneys for Defendants.

STATE OF KANSAS, }
COUNTY OF SHAWNEE, } ss.

J. R. Hallowell, being duly sworn according to law, says that he is one of the attorneys of the township of Spring Valley, in the county of Cherokee and State of Kansas, the defendant in the above-entitled action; that he has read the foregoing plea; that he knows the contents thereof, and that the matters and things therein stated relative to the non-execution of the bonds and coupons sued on herein are true and correct, of his own personal knowledge.

J. R. HALLOWELL.

Subscribed and sworn to before me, this 6th day of December, A. D. 1882.

[Seal.] A. S. THOMAS, *Clerk.*

This answer is verified by J. R. Hallowell, the attorney of the defendant. The verification is absolute, asserting the facts contained in it to be of his own personal knowledge.

Section 108 of the Code of Civil Procedure of Kansas, Dassler's Compiled Laws of 1879, page 616, reads as follows:

"SECTION 108. In all actions, allegations of the execution of written instruments and indorsements thereon of the existence of a corporation or partnership, or of any appointment or authority, shall be taken as true unless the denial of the same be verified by the affidavit of the party, its agent, or attorney."

The last clause of section 110 of the code reads as follows:

"When a municipal or other corporation is a party, the verification may be made by an officer thereof, its agent, or attorney."

Section 114 contains the following:

"It can be made by the agent or attorney only: First, when the facts are within the personal knowledge of the agent or attorney."

Section 114 also requires that this must be alleged in the verification.

It therefore appears that the contents of this answer are by the strict terms of the law sufficiently pleaded. To all of this answer, plaintiff files a general demurrer. This demur-

rer was argued in the court below, and was overruled. One of the points relied upon by the plaintiff in his demurrer was, that it was necessary for the defendant to traverse the fact that the Deputy Clerk may have signed the name of the County Clerk to the bonds and affixed the seal, although such fact was not alleged in the petition. A reading of the petition will disclose that it contains neither allegation nor hint at the possible fact that the Deputy Clerk signed the County Clerk's name and affixed the seal, and the Circuit Judge ruled that such allegations, even if sufficient in law, would be matter of avoidance to the plea, and must be set up by plaintiff by way of replication. The demurrer was therefore overruled, and plaintiff allowed judgment to be entered, and comes by writ of error to this court.

I.

The demurrer admits the answer to be true, and contends for the sufficiency of the petition. No fact or pretended fact not alleged in the petition can be implied to avoid the plea and to sustain the demurrer. The argument of the plaintiff is based upon three propositions, namely:

1st, That the defendant is concluded by the registration of the bonds to deny their execution.

2d, That they might have been lawfully executed by the Deputy Clerk signing the County Clerk's name and affixing the seal of the county, and that this court has a right to infer that fact, though it is nowhere pleaded, and does not appear upon the face of the bonds to sustain the demurrer.

3d, That the signature of the Clerk, and the affixing of the seal by him, are not necessary to the perfect execution of the bonds, and a *bona fide* holder is protected, even though the Clerk's name is forged and the seal affixed by one having no legal authority to affix or cause it to be affixed.

The second proposition we do not believe it is necessary to seriously argue. It involves an excursion outside of the record, but since some weight has been sought to be given in argument to the mere possibility of the existence of such fact, we feel at liberty ourselves to transgress the record also, and to assure this court that the Deputy never signed these bonds and never affixed the seal of the county to them, but that the same was done by a mere outsider, who was paid a small sum and promised a small share of the bonds for his nefarious and infamous services; but we think that the plea, from the necessity of the case, sufficiently denies that the Deputy Clerk ever signed the name of the County Clerk to these bonds, or affixed the county seal.

Section 115 of the Code of Civil Procedure is as follows:

"SECTION 115. In the construction of any pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to do substantial justice between the parties."

Section 41, article 3, chapter 25, reads as follows:

"SECTION 41. Every such Clerk shall appoint a Deputy, in writing, under his hand, and shall file such appointment in his office; and such Deputy, in case of the absence or disability of such Clerk, or in case of a vacancy in his office, shall perform all the duties of such Clerk during such absence, or until such vacancy shall be filled. Every such Clerk may appoint other Deputies, and his sureties shall be responsible under his official bond for the acts of all such Deputies."

The plea denies that the County Clerk ever authorized any party or parties to sign his name thereto or thereon, and that said signature is not his signature, nor did he affix or authorize to be affixed the seal of said county of Cherokee to said bonds or coupons. If inferences and presumptions are to be indulged to import a new or added meaning to these words, then the defendant is as much entitled to the benefit of such inferences as the plaintiff, and therefore it is

right and proper to give the full force and effect to the allegations in the answer. If the County Clerk did not sign himself nor authorize any one to sign, and did not affix nor authorize any one to affix the seal, then the plain, inevitable force of such allegation is, that no one having a vestige of authority did sign the name or affix the seal; and as the Deputy Clerk derives his authority solely from the appointment of the County Clerk, then this allegation in terms excludes the far-fetched hypothesis of plaintiff's counsel, that the Deputy Clerk either signed the name of the Clerk or affixed the seal of the county. But there is a limitation upon the exercise of any authority by the Deputy Clerk to do such acts, namely, the absence or disability of the County Clerk, or the vacancy of his office; and such limitation, being positive and definite, can only be removed for the benefit of the plaintiff by affirmative allegations in the reply. We have thought it best at the outset to dispose of this foreign and extraneous matter which has been lugged into the record by plaintiff's counsel.

II.

We will next consider the legal force and effect of the plea. We need make no argument to convince any court that any negotiable instrument not executed by the party purporting to make it, or executed by another without his knowledge or consent, has no validity whatever in the eye of the law, and is a mere piece of waste paper. And further, that no amount of good faith upon the part of the holder or purchaser of such paper can infuse any vitality into it, or give it any effect. It therefore becomes important to know whether this was the negotiable paper of the defendant, and executed by it.

Section 5, chapter 90 of the Laws of 1870, reads as follows:

"SECTION 5. If three-fifths of the electors voting at such election voted for the subscription of stock, the Board of County Commissioners shall order the Clerk to make such subscription in the name of the township, and shall cause such bonds as may be required by the terms of said vote and subscription to be issued in the name of such township, to be signed by the chairman of the Board and attested by the Clerk under the seal of the county: *Provided*, That the Commissioners shall not cause such bonds to be issued until the railroad shall have been completed through the township voting such bonds, or to such point in such township as may be conditioned in said bonds."

Section 43, article 3, chapter 25 of the Laws of 1868 (see Dassler's Compiled Statutes of 1879), page 280, reads as follows:

"SECTION 43. The County Clerk shall keep his office at the county seat; shall attend the sessions of the Board of County Commissioners, either in person or by deputy, and keep the seals, records and papers of the said Board of Commissioners, and shall sign the records of the proceedings of the Board of Commissioners, and attest the same with the seal of the county."

This section of the statute makes the County Clerk the custodian of the county seal, and in terms limits the right of affixing such seal to himself alone. This is an expressly delegated power, of which all purchasers of bonds are bound to take notice. The law of 1870 requires, also, that the bonds shall be attested by the County Clerk, under the seal of the county. This is also an express limitation upon the proper execution of these bonds. The demurrer, in admitting the truth of the plea, in effect declares, therefore, that if these so-called and pretended bonds had come into the hands of the plaintiff in this suit, with no other evidence of their execution upon their face than the signature of the one claimed to be the chairman of the Board of County Commissioners, without the attestation of the Clerk, and without the seal of the county attached, he would be protected as a

holder in good faith. We need not waste time in the argument of the proposition. In our judgment, the name of the County Clerk and the seal of the county were absolutely essential, under the laws of the State of Kansas, to prove the execution of these bonds; and in the absence of either, they would not be bonds at all, but mere valueless pieces of printed paper, even if they might be treated as executory contracts of the county by reason of the acts of the County Commissioners in putting them afloat. Nevertheless, they would be open to all defenses, into whosesoever hands they came before maturity and for value.

III.

These bonds, issued in 1871, under the act of 1870 before quoted, are, however, sought to be vitalized by the circumstance that they were registered under the 15th section of the act of March 2, 1872, and known as the "Registration Act." Plaintiff's counsel says in his brief:

"The writer hereof drafted the said registration law, and is therefore familiar with its origin, purpose, and subsequent history."

Though this assertion involves a *non sequitur*, we will not controvert the fact that he has a peculiar and recondite knowledge of the force and effect of this statute, as is evinced in the use he attempts to make of it in concluding this defendant upon this plea. We will state his position in his own language, without, however, strengthening it, as he seems to think it necessary to do, by the free use of italics and capitals. The proposition that he asserts is sufficiently strong and startling without the adventitious aid of typographical emphasis:

"It was the intention to provide a State tribunal, which would command confidence and respect, to first determine if such bonds had been regularly and legally issued, and if the

signatures thereto were genuine, and if so to enter such determination in a book to be kept for that purpose, and thereupon to indorse and certify such determination and entry upon such bonds, which determination, entry, indorsement and certificate should be final and conclusive as to the facts thus determined, entered, indorsed, and certified. The Auditor of State was designated as such tribunal, and to him was committed the authority to determine if such bonds had been regularly and legally issued, and if the signatures thereto were genuine; and if so, to register the same in his office by entering such determination in a book to be kept for that purpose, and under his hand and seal of office to thereupon indorse and certify such determination and entry upon such bonds, which should be final and conclusive.

"The Auditor of State, under his hand and seal of office, indorsed upon the bonds [in controversy in this suit] his certificate of registration to the effect that the bonds had been regularly and legally issued; that the signatures thereto were genuine, and that the same had been registered in his office according to law. This determination and registration by the Auditor of State was final and conclusive, and cannot now be inquired into as against the plaintiff in error, a *bona fide* holder for value." (See pages 28 and 29 of argument of plaintiff's counsel.)

In support of this very startling doctrine, the counsel for plaintiff in error cites the case of *Lewis vs. Board of County Commissioners of Barbour County*, (105 U. S., page 39,) and quotes at length from the opinion of Mr. Justice HARLAN. Before discussing the applicability of this decision to the case in hand, we think it right to say that it is indeed true that this court has in its provident care for the business interests of the country and for the protection of the purchasers of municipal obligations in good faith, gone far towards making the registration of bonds under the law of 1872 a conclusive estoppel against the counties issuing them, and an inference favorable to the view of plaintiff in error might possibly be drawn from the language of the very able and learned opinion of Mr. Justice HARLAN in that case. We cannot believe, however, that it was the intention of this court in that

decision, or of the learned judge who wrote the opinion, to hold that the registration law was a conclusive estoppel as to the genuineness of signatures; or in other words, as to the fact of the execution of the bonds by the municipality charged with issuing them. It was not necessary to the decision of the case of Lewis against the Commissioners of Barbour county to hold this extreme view. The execution of bonds was not in question in that case. The court had before it in that case bonds admitted to be properly executed by the proper authority of the county, and in accordance with law under the act of 1872. That act made it the duty of the county to forthwith issue bonds when the people should direct them at an election, and place them in escrow with the Treasurer of the State, to be by that officer kept until the conditions upon which the bonds were to be delivered were fulfilled; and further, it made it the duty of the party to whom they were delivered, within thirty days to present the same to the Auditor of State for registration, who shall upon being satisfied, etc., etc., register the same. The claim in that case was that they never had been in the hands of the Treasurer, and he had never satisfied himself that the conditions upon which the bonds had been issued had been complied with, and therefore the bonds were by the terms of the act non-negotiable. This court held that the fact of registration estopped the county to deny that the bonds had been placed in escrow with the proper officer and delivered out of the same to the lawful owner; but, as we said before, bonds duly executed were in contemplation by the court when making its decision. In this case they are not bonds, but mere waste paper. The county, much less the township, has never done any act by which an estoppel may be fed against it. There is totally lacking in this case that essential ingredient of an

estoppel, *mutuality;* and we are quite sure that even if these bonds had purported to have been issued under the act of 1872, that this court would hold that that which is no bond, that that which never emanated from the township, but which is a pure fiction and fraud, could not be constituted a bond by mere force of an act of a ministerial officer, who by the law is entitled to receive one dollar for stamping a device upon the back of any such instrument handed to him, and signing his name below it. We have always heartily applauded the firmness and consistency with which this court has held municipalities to perform obligations created by their proper officers under the sanction of law, although in numberless instances it has resulted in great and irreparable hardship to the tax-payers constituting such municipalities. The state of the law holds communities to care and circumspection in the choice of those who shall be intrusted with these most important functions; but against such a device as this here sought to be legalized, municipalities have no protection, and we think experience has demonstrated that the rule is rigorous enough when it holds municipalities accountable only for the acts of officers done under color of law. It seems to us that it would be unspeakably unjust to hold them responsible for the criminal acts of those who, having no official connection with the county, should aid in putting in circulation mere forged instruments in the semblance of bonds of the county, because a ministerial officer selected by the State should certify to their genuineness.

We respectfully submit that if there is to be drawn from the language of this decision any assertion of the conclusiveness of the acts of the registering officer as to the genuineness of the bonds, then that Mr. Justice HARLAN in this decision

went further than he or the court which directed him intended to go or would go deliberately in such a case as the one now under consideration. As we have before said, such a ruling was not necessary for the decision of that case; but if the court intended in that case to decide that the certificate of the Auditor was conclusive as to the genuineness of the bonds and their execution, and the court still adheres to the view that that is the necessary and inevitable result of such certificate, then we desire to submit to the court that such a law would be unconstitutional, as tending to deprive citizens of property without due process of law. Any argument that we could make to strengthen the mere statement of such position would be unnecessary. By reference to the law, it will be seen that the Legislature nowhere declares what the effect of the certificate of the Auditor shall be. It is not by the terms of law made either *prima facie* or conclusive. But the Legislature of the State of Kansas could not constitutionally clothe even the Supreme Court with such monstrous power; much less could they give the force of a judgment, and a judgment *in rem* at that, conclusive and binding upon the whole world, to the mere certificates of a ministerial officer, to be affixed with a rubber stamp on the back of these bonds at a dollar apiece.

It is to be borne in mind that the admission of this demurrer is, as we take it, that the municipality has not acted at all. It has executed no bonds, much less issued them, and yet it is solemnly argued here that the force of this decision of the Auditor of the State of Kansas is to conclusively and irrefragibly establish a mortgage-lien of $150,000 upon the property and homes of a little frontier township in Kansas without their knowledge, without their consent through their proper officers, without their being summoned

to appear or have their day in court, but solely owing to the fact that some skulking criminal has forged the name of county officers to a written instrument. We humbly submit that if a law is not unconstitutional which vests such despotic and unregulated judicial power in the hands of a single ministerial officer, then the constitution is no barrier or protection against any wrong or injury whatever. If this decision rightly interprets the law, and this court shall declare such a law to be constitutional, then this august tribunal conferred more judicial power upon the Auditor of the State of Kansas than it has itself; and if the Auditor of State should happen to be a corrupt man, (which is not impossible even in Kansas,) there is no limit to the frauds that may be perpetrated upon the utterly helpless communities of the State. The obligations of municipalities will then be all unilateral; the consent of electors will be unnecessary. The real signatures of the officers of the county and the real seal of the county would simply complicate the action of this remorseless judicial machine. The definition of estoppel in all the books will have to be revised and amended. This new, one-sided estoppel without mutuality will have made all the learning upon this head, and all the rules of reason governing it, useless and inapplicable. A judgment without a judge, without service of process, without parties in court, without scales or sword, with nothing but some forged bonds and a rubber stamp to operate upon them, may then be safely invoked to protect the holder of anything bearing the semblance of a municipal bond. We cannot believe it to be the purpose of the learned author of this opinion to decide that this registration law is conclusive as to the fact of execution, but we feel confident that he will join readily and cheerfully with this court in a judgment against the constitutionality of such a law.

IV.

If it should be held that the law has the meaning contended for as to forged bonds, seeking the curative effect of the statute, that had been issued under the act of 1872, certainly this court will not include within the terms of such a decision bonds issued under the act of 1870. But if it should so decide as to such bonds, then the law is unconstitutional for another reason, as being retrospective in its operation and making that a contract between the parties which at the time that the so-called pretended bonds were put in circulation was not a contract at all, and involved no estoppel against the defendant township.

But these bonds were never legally registered. They were registered, if at all, under section 15 of the act of 1872, as follows:

"SECTION 15. That the holder of bonds heretofore issued or that may hereafter be issued in pursuance of any contract heretofore made under any law of this State, may have the benefits of this act by having such bonds registered in the office of said Auditor of State, as provided herein for the registration of bonds issued by virtue hereof. It shall be the duty of the Auditor of State, upon the registration of any bonds not issued under the provisions of this act, *within ten days thereafter*, to notify the officers issuing the same, of such registration, which fact shall be entered by such officers in a book wherein the record of such bonds is kept, and such bonds *shall thereafter be considered registered bonds.*"

Now there are several reasons why this statute does not work an estoppel upon the county as pleaded in plaintiff's petition; and the petition itself shows that the law has not been complied with in such a way and to that extent which would make these registered bonds.

What does section 15 require shall be done to give bonds issued prior to the Registration Act the character and force of registered bonds? The holder of bonds must have the bonds registered in the office of the Auditor of State, as

provided by law for the registration of bonds issued by virtue of the law. It then becomes the duty of the Auditor of State, after having registered such bonds, within ten days after such registration, to notify the officers issuing the same (in this case the County Commissioners and County Clerk of Cherokee county) of such registration, which fact shall be entered by such officers (in this case the officers of Cherokee county) in a book wherein the record of such bonds is kept, and such bonds shall *thereafter* be considered registered bonds.

Unless, therefore, the Auditor shall notify the officers of the county within ten days after the registration, and they, in furtherance and acceptance of such notification, shall themselves enter the bonds upon their books, the registration in contemplation of law is not complete. This provision of the statute was undoubtedly intended to prevent any retroactive effect on the county by the mere registration of the bonds themselves in the office of the Auditor of State. A reference to the plaintiff's petition shows that all that was ever done with these so-called bonds was to register them in the office of the Auditor of State. We herewith reproduce the only allegation in plaintiff's petition upon this subject of registration in confirmation of what we say:

"That afterwards, to wit, April 11, 1872, each of the said bonds, with all the interest coupons thereto attached, was duly registered *in the office of the Auditor of the State of Kansas*, according to law, and the fact that each of the said bonds was so registered was then and there, under the hand and seal of the said Auditor, in writing, duly certified and indorsed upon each of the said bonds, a copy of which said certificate and indorsement is filed herewith, made a part hereof, and marked 'Exhibit B.'"

Exhibit B is as follows:

"I, A. Thoman, Auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally

issued; that the signatures thereto are genuine; and that such bond has been duly registered in my office, in accordance with an act of the Legislature, entitled 'An act, etc., approved March 2, 1872.'"

The duty of the Auditor to notify the county officers and the duty of the county officers thereupon to register were subsequent in point of time to the making of the certificate of the Auditor upon the bonds, and such notification to and entry by the county officers were absolutely essential to complete their registration. It is not alleged that this duty was ever performed by the Auditor, or that the bonds were ever entered upon the books of the county. The only registration referred to in the petition is that done in the office of the Auditor of State and evidenced by his certificate upon the bonds. Clearly, then, his assertion that the signatures are genuine and that the bonds have been issued according to law, cannot be accepted as even *prima facie* true. The law by its express terms gives neither force nor validity to any finding of his until it is ratified and confirmed by the acts of the officers of the county, after notification, in entering the fact of registration upon a book wherein the record of such bonds is kept. If such notification had been given to the county officers, and they had entered the certificate before that time made by the Auditor upon the bonds in their proper books, then there would prove to be such a consent and such ratification and affirmance as would amount to an estoppel in favor of the holder of such bonds in good faith; but by force of the record in this case the court must conclude that these bonds are not registered bonds. If the court agrees with us upon this proposition, and we see no rational escape, it is not necessary to consider the question of the constitutionality of the law as applicable to these particular bonds, nor indeed at all.

Under the act of 1872 it was mandatory upon the holder

of bonds issued by virtue of the provisions of that act to have them registered, and it is doubtful whether any bonds issued under that law, whatever their recitals might be, would be good against defenses, in the hands of the holder in good faith, if they were not registered. Registration is, by the terms of that act, made a rule of property and negotiability; but as to the bonds contemplated by section 15, issued under prior acts, the law is permissive merely. It gives to the holder of such bonds the benefit of the registration law, and of such currency as his bonds might thereby derive by compliance with the terms and provisions of that section. But until the requirement of the provisions of that statute are complied with the bonds are as if the registration law had never been passed, and the plea of *non est factum* is good against them in whosesoever hands they may come. And furthermore, by the terms of that statute, the records of the county are made a public record of the bonds, of which the holder of bonds is as much bound to take notice as of the records in the Auditor's office; in fact, both records are inseparable, interdependent, and prove and establish each other. The record in the Auditor's office is a nullity unless it is sustained and fortified by the record in the books of the county; and conversely, the registration in the county could have no force unless done after the registration by the Auditor, and upon notification from that officer in accordance with law. If it be true, as we cheerfully admit, as asserted in the brief of plaintiff's counsel, that he drafted the registration law, and is, therefore, "familiar with its origin, purpose and subsequent history," he cannot have failed to notice this requirement of the statute, (which, we take it, is jurisdictional,) and his failure to aver a compliance with the law in this respect is conclusive evidence, quite as conclusive as he would have us believe the acts of the Auditor of State

to be, that these bonds are not registered bonds, and are in no respect entitled to the protection of that law. The citizens of Spring Valley township owe a debt of gratitude to the counsel of plaintiff in error for having inserted this salutary provision in the law, which might otherwise have been invoked against them with possible success to compel them to pay a very large issue of bonds which they, through their proper officers, never executed, which were fraudulent in their inception, and for which the township never received one dollar in value, either in railroad, stock, or anything else.

V.

The counsel for the plaintiff in error avers six reasons why the demurrer should have been sustained. We have, we think, answered and sufficiently disposed of all these reasons (so called), in the preceding argument. But the first reason advanced substantially contests the sufficiency of the answer for any purpose of defense, and asserts that it was not necessary to the validity of the bonds that they should have been attested by the County Clerk and the seal of the county affixed thereto by him. In counsel's argument under this head, he asserts it was the duty of the Board of County Commissioners, under the law, to cause the bonds to be issued, signed by the chairman of the Board, and attested by the County Clerk with the seal of the county affixed thereto; and because the Board had the exclusive authority to cause the bonds to be issued, they might have caused them to be issued without any vestige of such legal evidence of the exercise of that authority as the law prescribed, namely, the signature of the chairman of the Board and the attestation of the Clerk under the seal of the county. This argument is good for all purposes, or it is good for none. The purchaser of bonds without the signature of the County Clerk, without

the county seal, without the signature of the chairman, is as much protected as a holder in good faith as the purchaser of bonds which literally fulfilled all the requirements of the statute, because he had a right to assume and the township was estopped to deny that the Board of Commissioners had *caused* these bonds to be issued. If, as we before said, presumptions are to be indulged to the full extent asked for by counsel for plaintiff in error, then no act or exercise of authority in a lawful or rightful way was necessary upon the part of the county to conclude the township upon these bonds. Is this reason?

Granted that the Board of Commissioners had the right to direct the County Clerk to affix the seal and to sign his name, the law gave them no right to direct a mere stranger to do these acts, and certainly the law gave neither them, nor anyone whom they might persuade or direct, the right to forge the name of the County Clerk to the bonds. The law prescribed a series of acts that were essential to the execution of these bonds: the omission of any one of them invalidated the bonds. First, there must be a submission to the electors; second, an election; third, a subscription upon condition; fourth, a performance of the condition; fifth, the direction by the County Board that the bonds should be issued; sixth, the execution of the bonds under said direction by the signature of the chairman, and the attestation of the Clerk, under the seal of the county; seventh, the issue of the bonds to the company or individual entitled to receive them under the terms of the subscription.

The officers of the county act only by virtue of authority expressly conferred by law, and can make no contracts binding upon the county unless directly authorized so to do by law, and unless the law is complied with in the manner and form of making such contracts. If this be true as to the

acts of county officers, in reference to the creation of obligations binding upon the county, how much greater is the reason for strict circumscription of their power in the exercise of a carefully limited and delegated power to bind a *township* by the issue of bonds as in this case.

The policy of the law which makes municipal bonds negotiable by the law-merchant, and estops a municipality to deny the truth of the recitals contained upon the face of such instruments, can go no further than the rules of commerce warrant when applied to other forms of negotiable paper between individuals. If these bonds had been rightfully executed, in accordance with law, there can be no question but that all antecedent facts essential to the lawful exercise of the authority to issue the bonds would be presumed in favor of the *bona fide* holder by force of the recitals contained in the bonds. If, however, these bonds had come to the hands of a purchaser without the seal attached, or without the signature of the County Clerk, he would by the terms of the statute be put upon inquiry as to whether the bonds had or had not been lawfully issued. If the omission was a neglect or oversight, and the county had intended to issue the bonds in good faith, then that would be a fact upon which an issue might be framed and tried to the jury, or he might present the bonds to the county for the proper attestation. If the Commissioners failed to cause it to be made, then he might bring *mandamus* to have it done. But surely it needs no argument to convince any court that with these incomplete instruments in his hands he could not sit down in perfect security with a right to presume —

1st, That the County Commissioners caused the bonds to be issued; and,

2d, That the attestation and seal were not essential to their proper execution; or if the chairman's name had been omitted,

or the name of the chairman *de facto*, or if the name of both chairman and County Clerk and the impress of the seal of the county were absent from the bonds, he would be protected by a legal presumption that these papers never would have got into circulation unlawfully.

The complete answer to all this is, that all the applications made of the rules of the law-merchant to municipal bonds have been to bonds properly and legally executed in compliance with law, and not a case is to be found in the books where a *bona fide* holder has been protected against the plea of non-execution of the bonds as required by law. In the case of McClure against the township of Oxford, as cited by this court, the rational rule has been laid down prescribing a just limit to the rights of one claiming to be the holder of bonds in good faith. The court, through Mr. Chief Justice WAITE, says:

"To be a *bona fide* holder, one must be himself a purchaser for value without notice, or the successor of one who was. Every man is chargeable with notice of that which the law requires him to know, and all that, *after being put upon inquiry*, he might have ascertained by the exercise of reasonable diligence. Every dealer in municipal bonds which upon their face refer to the statute under which they were issued, is bound to take notice of the statute and of *all* its requirements."

Applying this rule to the case in hand: The statute of 1870 provides for an issue of bonds by the county, to be signed by the chairman and attested by the County Clerk under the seal of the county. A compliance with this provision is made evidential of the bonds being issued in conformity with law. The purchaser of these bonds is bound in good faith to see that these evidential facts exist. He cannot assume that any names and any seal are the proper names of the officers of the county, or the seal of the county. He cannot assume that if names appear upon the bonds sim-

ilar to those of the proper officers of the county and a seal is affixed similar to that of the county, that either the names or the seal are genuine. The signatures and seal being jurisdictional and evidential facts, it becomes his duty to prove their genuineness, and he purchases bonds, so far as these requirements of the law are concerned, at his peril.

In the case of Otis and others against Cullum, receiver, (92 U. S., page 447,) an effort was made on the part of the purchaser of bonds illegally issued to recover from the receiver of the bank that had sold him the bonds, the purchase-price of such bonds as money had and received. He failed in such action. The law under which the bonds were issued was held by this court to be unconstitutional, (*vide Loan Association vs. Topeka,*) and the bonds themselves were valueless.

Mr. Justice SWAYNE, in delivering the opinion of the court, said:

"Such securities throng the channels of commerce which they are made to seek, and where they find their market. They pass from hand to hand like bank notes. The seller is liable *ex delicto* for bad faith; and *ex contractu* there is an implied warranty on his part that they belong to him *and that they are not forgeries.* Where there is no express stipulation there is no liability beyond this."

It therefore appears that as between those trading in such bonds as these there resides in the law an ample protection to purchasers in the implied assumpsit as to the genuineness of the bonds. The holder of these bonds is, therefore, not remediless, although they are forgeries. He has his right to recover against the seller, and the fact that an implied assumpsit of the genuineness is raised in favor of the purchaser against the seller, negatives the theory that the purchaser may rely upon the apparent execution in compliance with law without strict inquiry as to the genuineness of signa-

tures. In support of the theory that the seal and attestation of the clerk are not necessary, counsel for plaintiff in error cites the case of the *State, ex rel., v. Allen*, 5 Kas. 221. That case was a *quo warranto* proceeding against Allen, the County Clerk, for refusing to obey the direction of the Commissioners to sign and affix the seal to certain bonds. The court does not hold that the bonds would be sufficient without his seal or signature, but they do hold that it was his duty to obey the direction of the Board, and for a failure in that regard he was ousted from his office. There is nothing of this sort in this record, and we submit that there is not to be implied from this case or from the law, as we have fully cited it, any license to the Board of County Commissioners to permit some nominal third person to sign the name of the County Clerk and affix the seal of the county, even though the County Clerk was contumacious, and refused to sign; but if such extraordinary power was exercised or might be exercised, it cannot be presumed, but must affirmatively appear and is clearly the subject of replication; and we submit further, that as the record does not show that the seal was affixed and the signature made by direction of the Board, and it is admitted by the demurrer that neither the signature was made nor the seal affixed by the only person authorized by law to do both, that the court must presume that the Board did not cause the bonds to be issued.

For the foregoing reasons, therefore, we ask that the judgment of the court below shall be affirmed.

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